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AUTHOR Hyde, Leslie C.

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ABSTRACT

Prepared as part of the program of the Northeast Regional Center for Rural Development under Title V of the Rural Development Act of 1972, this compendium cites 194 state laws related to public control of privately owned land outside developed urban areas in 12 Northeastern States. Arranged alphabetically and ordered chronologically, this compendium is comprised of a state-by-state listing of principal land-use laws as passed through the 1975 legislative sessions in: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and West Virginia. Information given on each act cited includes the following: (1) title, (2) date enacted, (3) date of amendment (if any), (4) the agency or agencies charged with administering the act, and (5) a summary of the Act's major provisions. Presented via chart, a classification system is provided for this compendium to aid in identification of laws relative to specific topics and in comparison with similar statutes in different states. The four major categories of the compendium classification system are identified as: (1) policy power; (2) use of public agencies; (3) use of tax manipulation; and (4) public acquisition of open space land. (JC)

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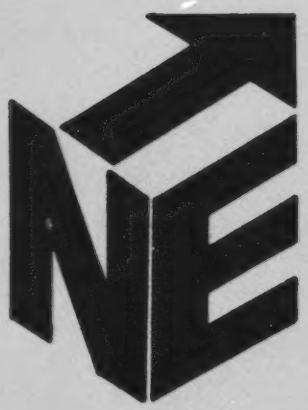

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State Land-Use Laws in the Northeast:

a Compendium and Classification of Selected Statutes

by

Leslie C. Hyde

Northeast Regional Center for Rural Development
Cornell University, Ithaca, New York

Connecticut *Delaware* Maine *Maryland* Massachusetts *New Hampshire*
New Jersey New York *Pennsylvania* Rhode Island *Vermont* West Virginia

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CONTENTS

Foreword
Olaf F. Larson, Northeast Regional Center for Rural Development . . v

I. INTRODUCTION

The Role of Federal, State and Local Government in Land-Use Control . . 1

The Compendium 2

The Land Law Classification System 3

II. THE CROSS-REFERENCE CHART AS A GUIDE TO THE COMPENDIUM

How to Use the Charts 6

Summary of the Classification System 8

Cross-Reference Chart for the Laws Listed in the Compendium
by Type of Land-Use Control Device and State. 9

III. THE COMPENDIUM OF STATE LAND-USE CONTROL LAWS

Connecticut 21

Delaware 31

Maine 41

Maryland 53

Massachusetts 65

New Hampshire 75

New Jersey 83

New York 91

Pennsylvania 105

Rhode Island 113

Vermont 121

West Virginia 131

0005

FOREWORD

This compendium of 194 state laws directly related to public control of privately owned land outside of developed urban areas in the 12 northeastern states was prepared by Leslie C. Hyde, Assistant to the Director, Northeast Regional Center for Rural Development.

A preliminary version, identified as the Center's Special Report No. 3, was prepared specifically for distribution to participants in the October 2-4, 1974 Conference on Rural Land-Use Policy in the Northeast sponsored by the Northeast Regional Center for Rural Development and three cooperating groups affiliated with the land-grant colleges and universities of the region. The preliminary version has been revised and updated to include laws passed through December 31, 1974. A classification system has been added to facilitate the identification of laws in different states which have similar functions.

Robert F. Brodegaard, a third year law student at Cornell, rechecked the laws listed in the compendium against the state statutes for accuracy and for any important land-use laws which might have been overlooked. Many of the suggestions which resulted from his careful review have been incorporated into the final draft.

The following individuals reviewed or arranged for others to review an early draft of the compilation for individual states: David J. Burns and William L. Park, Rutgers University; Dale K. Colyer, West Virginia University; Howard E. Conklin, Cornell University; Johannes Delphendahl, University of Maine; N. Eugene Engel, University of Massachusetts; Donald J. Epp, Pennsylvania State University; Irving F. Fellows, University of Connecticut; Sidney Ishee, University of Maryland; Eliot C. Roberts, University of Rhode Island; Gerald F. Vaughn, University of Delaware; and Silas B. Weeks, University of New Hampshire. William Lesher, Cornell University, provided copies of several recent laws. He also provided some unique insights into the actual implementation of some of these laws. Professor E.F. Roberts, the Cornell Law School, offered valuable comments on various components of the report and helped to clarify a number of legal questions. Lee M. Day, Director Designate of the Northeast Regional Center for Rural Development, also reviewed and provided helpful comments on several portions of the text. The report was edited by Lucy M. Cunnings and typed by Jocelyn Loh.

This publication has been prepared as a part of the program of the Northeast Regional Center for Rural Development conducted under Section 503 (b) (2), Title V of the Rural Development Act of 1972 and as a part of its program supported by P.L. 89-106 special grant funds provided through the Cooperative State Research Service, U.S. Department of Agriculture.

Olaf F. Larson

Director, Northeast Regional Center
for Rural Development

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I. INTRODUCTION

The Role of Federal, State and Local Government in Land-Use Control

In recent years land use has become the subject of much discussion, controversy and legislation at the three principal levels of government--federal, state and local. At the national level, Congress has passed several laws which are having a substantial, though frequently indirect, impact on land use. These include the Clean Air Act, the Federal Water Pollution Control Act, the National Environmental Policy Act, the Coastal Zone Management Act and the Federal Flood Plain Insurance Law. In 1974 Congress failed to pass a national land-use planning bill which would have established a grant-in-aid program to assist states in developing land-use planning processes. In addition, the act would have required participating states to identify and review land-use decisions now being made by local governments which are of more than local concern. Similar legislation is likely to be introduced again. While federal legislation has had and will continue to have an important impact, the major responsibility for land-use planning and decision-making rests with state and local governments. The focus of this report is on these state and local units of government.

Traditionally, land-use decisions have been delegated by the states entirely to local governments in the form of zoning and subdivision control. Under the pressures of a mushrooming population seeking jobs, homes and services, these devices have to a large extent proved ineffective in protecting critical environmental areas, preserving community character and promoting socially open communities. In an effort to overcome some of these shortcomings, a number of local governments have turned to other devices. These include: planned residential developments (PRD), purchase of easements and development rights, phased development according to a capital budget or plan, and moratoriums on development. But local governments are severely limited as to the devices they can employ to regulate land use. In general, they have only such authority or power as has specifically been granted to them by the state.

The inability of local governments to adequately regulate development has manifested itself in a number of social and environmental problems which face many states today. These include the loss of prime agricultural land; the draining, filling and destruction of inland and coastal wetlands; the pollution and siltation of lakes and streams; the contamination of aquifers; the destruction of historic landmarks; and the loss of scenic and other open space amenities. A recognition of the shortcomings of municipal zoning and subdivision control, combined with a growing awareness that many decisions made by local units have a wider impact, has led to a flurry of state-level legislative activity to influence land use. Since 1960 the 12 states of the Northeast have passed more than 120 separate laws relating to this topic; more than 50 of these have been passed since 1970.

This report has been prepared in an effort to provide a handy reference guide to more than 190 state land-use laws. Its focus is on laws directly related to public control of privately owned land outside developed urban areas.

The Compendium

The compendium, or body, of this report is comprised of a state-by-state listing of the principal land-use laws of the 12 states in the Northeast as passed through the 1974 legislative sessions. The states have been arranged alphabetically. Within states, the statutes have been ordered chronologically beginning with the earliest.

The following information has been included for each act: the title, date enacted, date of amendment (if any), the agency or agencies charged with administering the act, and a summary of the act's major provisions. Some clarification should be made regarding this information.

The title given to an act by the compiler is designed to reflect the principal provisions and intent of the law. Except where set in quotes, the title is different from that given in the statute.

"Date enacted" refers to the year the particular act cited was enacted. In the case of some statutes, especially some of the older ones, the present act may have superseded an earlier law containing similar provisions. When this fact has been brought to the compiler's attention, the date of the earlier act has been noted, but no special effort has been made to identify these repealed acts. Most acts have been amended at least once since their original enactment; some have been amended many times. When an act has been amended more than seven times, the phrase "numerous amendments" has been used in place of the individual dates. In most cases the substance of the amendment has not been noted. The amendment may have been a minor change for the purpose of clarification, or it may have substantially added to or altered the act. The reader who wishes to learn the specifics of an amendment should consult the state session laws for the year given.

"Statute" refers to the present codification of the act in the annotated state statutes. This citation may change if the state legislature decides that the act should be classified elsewhere in the statutes or in the case of a general recodification. Such a recodification is in process for Maryland and will likely take several years to complete.

"Administered by" refers to the governmental body delegated the responsibility of carrying out the provisions of the act. In many cases more than one agency has been granted authority over separate components. When an agency is located within a larger hierarchy, the name of the larger authority has been given in parentheses.

The "summary" for most acts contains the legislative intent of the law (if given), the major provisions of the law, and the penalty (if any) for violating its provisions. With similar acts in the same or different states, an effort has been made to describe the act so as to accentuate similarities and differences. The "summary" is not intended to be a substitute for the complete text of the law, but rather to provide the reader with a general understanding of the law.

The fact that a state has adopted a given law in no way indicates its present level of use or effectiveness. No attempt has been made in this report to indicate the impact of specific acts on land use. However, a study to assess the impact major land-use laws are having in each of the 12 northeastern states is being conducted by State Agricultural Experiment Station investigators as part of a regional research project designated as "NE-90, Rural Land Use Policy in an Urbanizing Environment." Professor Howard E. Conklin, Department of Agricultural Economics, Cornell University, is project manager for this study.

The Land Law Classification System

A classification system has been devised for all statutes listed in the compendium to provide a quick means of identifying laws relating to a specific topic and to facilitate the comparison of similar statutes in different states. This system is presented in a chart which follows this introduction.

The classification system includes four major categories or devices and a number of sub-categories or topics. The major categories are: (a) use of police power, (b) use of public agencies, (c) use of tax manipulation and (d) public acquisition of open space land. The placement of an act under one of these headings was based on the mechanism authorized in the act to regulate or influence land use. Several acts have been classified under more than one major category and topic.

Listed under the police power heading are those statutes which exert the power of the state to regulate land use in order to protect the health, safety, morals or general welfare of the community. Certain acts included under this heading grant the police power of the state to lesser political subdivisions (e.g., zoning authority has been granted to municipal subdivisions). Short of public acquisition, acts granting police power exert the greatest control over land use. Basically, laws of this type tell a landowner certain things that he cannot do with his property. Of the 194 acts cited in this report, 120 are classified under the police power heading. These have been grouped under 11 separate topics as listed below:

A. Use of Police Power

1. Waterways protection

2. Zoning regulation
   a) municipal
   b) county

3. Subdivision regulation
   a) municipal
   b) county

4. Soil, watershed and forestry conservation districts

5. Strip mining regulation

6. Regulation of development in special regions

7. Wetland and floodplain use regulations
   a) tidal wetland
   b) inland wetland
   c) floodplain

8. Statewide regulation of private development

9. Scenic river preservation

10. Critical areas register

11. Miscellaneous police power acts

There are a number of topics (subcategories) that the reader might expect to find under this heading which have been omitted. These include laws pertaining to health and building codes and those regulating such specific activities as billboards, junk yards and power plant siting. Also excluded were some statutes whose impact on land use, even if important, was indirect, as in the case of laws modeled after federal air and water quality standards.

The second major category, use of public agencies, includes statutes which provide for the establishment of organizations or mechanisms to influence or coordinate land-use decisions. Although statutes of this type exert no direct control, they tend to have an important impact on land use because of the proximity of the mechanism established to the decision-making structure. Twenty-eight statutes of this type have been cited in this report. They have been classified under four topical headings as shown below:

B. Use of Public Agencies

1. Wetland drainage organizations

2. Conservation commission acts

3. State environmental policy acts

4. Other use of public agencies

The topics listed under this major category are highly selective; many others with varying degrees of impact on land use might also be cited.

Classified under the use of tax manipulations, the third major category, are statutes which modify the existing tax structure to encourage landowners to use their land in such a manner as to provide a public benefit. With most of these acts compliance is voluntary. The landowner must apply for and receive approval before becoming eligible for the act's provisions. The 32 such statutes cited in the report have been listed under the three topical headings shown below:

C. Use of Tax Manipulation

1. Forestry management incentives

2. Current use assessment of farm, forest and open-space land

3. Other tax incentive laws

State income tax laws which allow tax deductions for home mortgages, as well as other income tax incentives, have been omitted from this compilation.

Classified under the fourth category are statutes which enable local governments to acquire fee simple or lesser interests in open-space land and those which establish state-level funding programs to assist municipalities with such acquisitions. Traditionally, the government has not been permitted to buy land unless it was for active public use. However, the courts have recently been taking a broader view, holding that public purpose does not necessarily require public use.[1] The 20 statutes cited in this report which fall under this major heading reflect this change in attitude.[2] These are listed under two topical headings:

D. Public Acquisition of Open-Space Land

1. Enabling acts

2. Funding acts

A number of acts enabling state agencies to acquire interests in open-space land or authorizing expenditures for such purposes have been excluded from this report. In general, only those statutes pertaining to the acquisition of open-space land by local governments have been included, except where local and state provisions are contained in the same act.

Clearly, this is one person's system of classification and someone else attemtping a similar task might devise a different system.

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[1] William H. Whyte, The Last Landscape (Garden City, N. Y.: Doubleday & Company, Inc., 1968)

[2] note: The total number of statutes cited in this report (194) does not correspond exactly with the sum of the statutes listed by major category, since several laws are classified under more than one heading.

II. THE CROSS-REFERENCE CHART AS A GUIDE TO THE COMPENDIUM

How to Use the Charts

The classification system is the basis for a cross-reference chart designed to give the reader an overview of the different types of land laws enacted by the states and to serve as a means of quickly identifying the laws in the compendium pertaining to a particular topic. To make the best use of the charts, first find the column heading for the topic of interest, e.g., use of police power for flood plain use regulation. Follow the column for the topic down to the line for any given state. The number found there corresponds to the number assigned the act as listed in that state's compendium. Where more than one number is listed for a given topic and state, each refers to a separate act. The date given adjacent to the number(s) refers to the year a law pertaining to the topic was first passed by the state. By examining the dates under a given topic the reader can readily see the order in which states have adopted a particular type of legislation. When more than one number is given, the date always refers to the lowest number, as laws listed in the compendium are ordered chronologically beginning with the earliest.

The topics under each of the major headings A, B, C and D have been arranged from left to right chronologically according to the date a law pertaining to the topic was first passed by one of the states in the Northeast. Thus, the reader is able to see at a glance which group of laws have been in effect the longest and which are the most recently enacted statutes. For example, waterways protection laws (column A-1 in the chart) are the oldest under the police power device and have been in effect in Rhode Island since 1882. The most recently enacted specific category of laws relating to this device are those concerning critical areas (column A-10 in the chart), which were first passed in 1974.

Some interesting comparisons between topics and among states can be made. After reading the laws enacted by different states to deal with similar problems it becomes obvious that once one state in the region has adopted a new piece of politically acceptable legislation, it usually isn't long before others follow. This has been especially true of wetlands legislation. Prior to 1963, the only state wetlands protection laws were those which applied to the dredging, filling and obstructing of navigable waterways. There were none to regulate the alteration of non-navigable waters or wetlands. In 1963 Massachusetts enacted the "Jones Act"[1], which

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[1] For a history of the Massachusetts Wetlands Protection Program see Fred Bosselman and David Callies, The Quiet Revolution in Land-Use Control, prepared for the Council on Environmental Quality (Washington, D. C.: Government Printing Office, 1972), pp. 205-234.

requires developers to obtain a permit from the state before commencing to alter any coastal wetland or marsh (see footnote o in chart). This concept caught on quickly. Ten years later all the states in the Northeast with coastal areas had approved legislation similar to that adopted by Massachusetts. The idea quickly spread from coastal wetlands to inland wetlands and flood plains (columns A-7b and A-7c in chart) despite several court decisions which held this to be an unconstitutional use of the police power in violation of the Fifth Amendment.[2] Currently, seven states have approved inland wetland protection laws and the same number have floodplain control statutes.

A similar pattern is revealed by studying the current use value assessment laws adopted by different states (column C-2 in chart). In 1956 Maryland became the first state to enact this type of legislation by providing that qualified farmland be assessed according to its present use value rather than its market value. Other states obviously felt this to be a solution to their rapid loss of farmland, since by the end of 1974 all but one of the northeastern states had adopted similar legislation.[3] Many states expanded this concept to include forest and open space land. The only state not adopting a form of current use value assessment is West Virginia which offers its farmers tax relief in a different form (see item 3 for West Virginia in compendium). Similar comparisons can be made by studying each of the acts referred to under a topical heading. An effort has been made to include all statutes in the 12 states which pertain specifically to a given topic.

Not all of the statutes listed under a topic are similar; in fact, some are quite different from one another. This is especially true of those listed under the topical heading "Regulation of Development in Special Regions" (column A-6 in chart). Most of the laws included under this category authorize state agencies to regulate development within a specific region of the state. In all cases the region defined encompasses a number of local governmental units, but the area is always less than the entire state. The similaries between most of these acts end here. A number of these acts regulate development within major river basins; others regulate land use in coastal areas. Maine's Land-Use Regulation Commission oversees development in the unorganized territory of the state, an area encompassing nearly half of the state's land mass. New York's Adirondack Park Agency regulates the use of private and publicly owned land in a vast mountainous area in the northern part of the state. However, some acts included under this topical heading are nearly identical with each other, e.g., the Delaware River Basin Compact adopted by New York, Pennsylvania, New Jersey and Delaware.

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[2] The Fifth Amendment states that private property must not "be taken for public use without just compensation." For a discussion of recent court decisions regarding wetland laws see Fred Bosselman, David Callies and John Banta, The Taking Issue: An Analysis of the Constitutional Limits of Land Use Control. Published for the Council on Environmental Quality (Washington, D.C.: Government Printing Office, 1973).

[3] For more information see Thomas F. Hady and Ann G. Sibold, State Programs for the Differential Assessment of Farm and Open Space Land, Agricultural Economics Report No. 256 (Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, 1974).

From this discussion it should be clear that it cannot be assumed that acts classified under the same topical heading are necessarily similar in text. In order to determine which statutes are similar and which are different the reader must consult the summaries in the compendium. Of course, anyone wishing more detailed information should examine the complete text of the law.

Summary of the Classification System

A. Use of Police Power (Page 10)
1. Waterways protection
2. Zoning regulation
a) municipal
b) county
3. Subdivision regulation
a) municipal
b) county
4. Soil, watershed and forestry conservation districts
5. Strip mining regulation
6. Regulation of development in special regions
7. Wetland and floodplain use regulations
a) tidal wetland
b) inland wetland
c) floodplain
8. Statewide regulation of private development
9. Scenic river preservation
10. Critical areas register
11. Miscellaneous police power acts

B. Use of Public Agencies (Page 15)
1. Wetland drainage organizations
2. Conservation commission acts
3. State environmental policy acts
4. Other use of public agencies

C. Use of Tax Manipulation (Page 16)
1. Forestry management incentives
2. Current use assessment of farm, forest and open-space land
3. Other tax incentive laws

D. Public acquisition of Open-Space Land (Page 17)
1. Enabling acts
2. Funding acts

Cross-Reference Chart for the Laws Listed in the Compendium

by Type of Land-Use Control Device and State

A. Use of Police Power

State	1. Waterways Protection[a]		2. Zoning Regulation[b]			
			a. Municipal		b. County	
	No.*	Date	No.	Date	No.	Date
Connecticut	4, 6, 9, 14, 18	1945	3	1925		
Delaware	9	1966	2	1923	11, 13	1967
Maine	4, 6, 17, 18, 19	1947	2, 12	1925		
Maryland	15, 17	1970	3	1933	3	--[c]
Massachusetts	11	1968	3	1920		
New Hampshire	8	1967	3, 12	1925		
New Jersey			3	1928		
New York	1, 3	1909	4, 6, 9	1923		
Pennsylvania	3	1913	11	1968[d]	11	--[c]
Rhode Island	3	1882	4	1921		
Vermont	5, 7	1965	6	1967[e]		
West Virginia	10	1973	2	1931	2	--[c]
Total states**	11		12		4	

* Refers to the number assigned the statute in the compendium listing.

** Number of states which have adopted one or more laws on the topic.

[a] These acts regulate the dredging, filling and obstructing of state waterways. The alteration of navigable waters is also controlled by the Federal Rivers and Harbors Act of 1899 (33 U.S.C.A. 401 to 413).

[b] Most of these acts were modeled after the Standard State Zoning Enabling Act (SZEA) published by the U.S. Department of Commerce in 1922.

[c] County zoning provisions are contained in the municipal zoning law and may have been added by amendment subsequent to the initial passage of the municipal enabling act.

[d] Zoning regulations were first approved by Pennsylvania in 1923.

[e] Zoning regulations were first approved by Vermont in 1931.

A. Use of Police Power (continued)

State	3. Subdivision Regulation[f]				4. Soil, Watershed and Forestry Conservation Districts[g]	
	a. Municipal		b. County			
	No.	Date	No.	Date	No.	Date
Connecticut	5, 12	1947				
Delaware	5	1953	8, 10, 12	1965	3	1943
Maine	3, 12	1943				
Maryland	4	1933			5, 6, 8, 14	1937
Massachusetts	5	1936			6	1943
New Hampshire	4	1935				
New Jersey	4, 8	1930	10	1968	5	1937
New York	4, 6, 9	1923	5	1925		
Pennsylvania	11	1968[i]	11	--[h]	4	1945
Rhode Island	5	1945				
Vermont	6	1967			3	1939
West Virginia	2	1931	2	--[h]	4, 5	1939
Total states	12		5		7	

[f] Most of these acts were modeled after the Standard City Planning Enabling Act (SPEA) published by the U.S. Department of Commerce in 1928.

[g] Only those acts which grant police power authority have been included. Other states have similar enabling legislation but grant such districts advisory roles only.

[h] County subdivision provisions are contained in the municipal subdivision law and may have been added by amendment subsequent to the initial passage of the municipal enabling act.

[i] Subdivision regulations were first approved by Pennsylvania in 1947.

A. Use of Police Power (continued)

State	5. Strip-Mining Regulation		6. Regulation of Development in Special Regions[j]	
	No.	Date	No.	Date
Connecticut			19	1973
Delaware			6, 15	1961
Maine			9	1969
Maryland	12	1967	13	1967
Massachusetts			18	1974
New Hampshire				
New Jersey			6, 9, 15	1961
New York	19	1974	8, 9, 10, 14	1961
Pennsylvania	5	1945[k]	6, 10	1961
Rhode Island				
Vermont				
West Virginia	6, 8, 9	1967[l]		
Total states	4[m]		8	

[j] Classified under this heading are laws granting a specially appointed or existing agency the power to regulate certain land uses within a specific region of the state.

[k] The major strip-mining provisions of this act were added in 1971.

[l] Originally passed in 1939; major changes have been made since 1967.

[m] All states in the Northeast where strip mining has been or is likely to become a problem have passed this form of legislation.

A. Use of Police Power (continued)

State	7. Wetland and Flood Plain Use Regulation[n]					
	a. Tidal Wetland		b. Inland Wetland		c. Flood Plain	
	No.	Date	No.	Date	No.	Date
Connecticut	11	1969	18	1972	18	1972
Delaware	16	1973	16	1973		
Maine	8, 12, 13	1967	12, 17, 18, 19	1971	12	1971
Maryland	15, 17	1970				
Massachusetts	9	1967[o]	9, 11	1967	9, 11	1967
New Hampshire	7	1967	7, 8	1967		
New Jersey	12	1970			13[p]	1970
New York	18	1973	3	1911[q]	21[p]	1974
Pennsylvania						
Rhode Island	8, 10, 13	1965	12	1971	12	1971
Vermont					13[p]	1973
West Virginia						
Total states	9[r]		7		7	

[n] For other acts pertaining to flood plain and wetland use see heading "Regulation of Development in Special Regions."

[o] In 1963 Massachusetts became the first state to enact a tidal wetlands statute; this act was repealed and replaced by the present act in 1967.

[p] The act's main purpose is to insure local compliance with the Federal Flood Plain Insurance Law (42 U.S.C.A. 4001 to 4127).

[q] Prior to a 1965 amendment, the regulations imposed by this act applied primarily to navigable waterways.

[r] All states in the Northeast with coastal areas have passed legislation pertaining to this topic.

A. Use of Police Power (continued)

State	8. Statewide Regulation of Private Development[s]		9. Scenic River Preservation[t]		10. Critical Areas Register[u]		11. Miscellaneous Police Power Acts
	No.	Date	No.	Date	No.	Date	No.
Connecticut							14
Delaware							
Maine	11, 20	1970			22	1974	14
Maryland					20	1974	14
Massachusetts			15	1971			2, 7
New Hampshire	9	1967					10, 13
New Jersey							
New York			15	1972			
Pennsylvania			13	1972			
Rhode Island							
Vermont	9, 11	1969					2, 8
West Virginia			7	1969			
Total states	3		4		2		6

[s] Acts which regulate development only in fragile environmental areas (e.g., wetlands) or in specific regions of a state are classified elsewhere.

[t] Modeled after the Federal Wild and Scenic Rivers Act (16 U.S.C.A. 1271 to 1287).

[u] Modeled after the American Law Institute's "Model Land Development Code."

B. Use of Public Agencies

	1. Wetland Drainage Organizations[v]		2. Conservation Commission Acts[w]		3. State Environmental Policy Acts[x]		4. Other Use of Public Agencies
	No.	Date	No.	Date	No.	Date	No.
Connecticut	1	1902	7	1961	14	1971	15
Delaware	4	1951					
Maine	1	1881	7	1965			
Maryland	1, 2	1858			18	1973	
Massachusetts	1	1702	8	1957	16	1972	13, 14
New Hampshire	1	1883	6	1963			
New Jersey	1	1881	11	1968			2
New York	2	1911	12, 16	1970			
Pennsylvania	1	1863					
Rhode Island	1	1874	6	1960			
Vermont	1	1868					
West Virginia	1	1917					
Total states	12		7		3		3

[v] In contrast to the wetland protection laws recently passed by many states, these acts provide a rationale and a mechanism for draining and filling in wetlands.

[w] In 1957 Massachusetts became the first state to adopt conservation commission legislation. Outside of New England these organizations are known by different titles but are similar in function.

[x] Modeled after the National Environmental Policy Act of 1969 (42 U.S.C.A. 4321 to 4347). New Jersey has put environmental impact assessment requirements into effect by administrative orders rather than by legislative action.

C. Use of Tax Manipulation

State	1. Forestry Management Incentives[y]		2. Current Use Assessment of Farm, Forest and Open-Space Land[z]		3. Other Tax Incentive Laws	
	No.	Date	No.	Date	No.	Date
Connecticut	2	1913	8, 10, 17	1963		
Delaware	2	1935	14	1968		
Maine	5, 16	1953	15	1971		
Maryland	10	1963	7	1956	11	1965
Massachusetts	4	1922	17	1973		
New Hampshire	2, 5	1903	11	1973		
New Jersey			7	1964		
New York	20	1974	7, 13, 20	1960	11	1968
Pennsylvania	2	1905	8, 12, 14	1966		
Rhode Island	2	1878	11	1968		
Vermont			10	1969	4, 12	1955
West Virginia					3	1933
Total states	9		11		4	

[y] These acts were the forerunners of those in the next category. They encourage landowners to manage their woodlots on a sustained yield basis.

[z] Classified under this heading are laws which fall into the three major groups of use value assessment laws as identified by Hady and Sibold namely (1) preferential assessment, (2) deferred taxation and (3) restrictive contracts and agreements; see State Programs for the Differential Assessment of Farm and Open Space Land, Agricultural Economics Report No. 256 (Washington, D.C.: Economic Research Service, U.S. Department of Agriculture, 1974)

D. Public Acquisition of Open Space Land

State	1. Enabling Acts		2. Funding Acts	
	No.	Date	No.	Date
Connecticut	10, 16	1963		
Delaware			7	1964
Maine	10, 21	1970		
Maryland	9, 19	1960	16	1970
Massachusetts	10, 12	1967		
New Hampshire				
New Jersey			14	1971
New York	7	1960	17	1972
Pennsylvania	12	1968	7, 9	1964
Rhode Island	9	1965	7	1964
Vermont	10	1969		
West Virginia				
Total states	8		6	

III. THE COMPENDIUM OF STATE LAND-USE CONTROL LAWS

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CONNECTICUT LAND-USE CONTROL LAWS

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CONNECTICUT LAND-USE CONTROL LAWS[1]

1. Draining Wetlands for Health

date enacted: 1902; revised 1918, 1930, 1949; amended 1965

statute: C.G.S.A. 19:86

administered by: town director of health or municipal board of health, selectmen, State Commissioner of Health

summary: Following the written complaint of anyone concerning the unhealthy natural conditions of a swamp, and after such conditions are confirmed, the municipal health official may order the swamp to be filled in or drained at community expense. Outside of a city or borough the operation is supervised by the selectmen.

The landowner is required to pay the municipality a sum for benefits accrued as a result of this draining or filling.

The landowner may appeal an order to drain or fill the wetlands to the State Commissioner of Health.

2. Forest Yield Tax

date enacted: 1913; revised 1918, 1930, 1949; amended 1955, 1963, 1971

statute: C.G.S.A. 12:96 to 103

administered by: state forester (Department of Agriculture, Conservation and Natural Resources), local assessor

summary: Enables owners of forest land which meets certain minimum qualifications - i.e., at least 25 acres and worth not more than $100 per acre excluding timber - to apply to the state forester for special tax treatment. If approved, the local assessor values the land and the forest products separately. The land is assessed at a reduced annual rate; forest products are not taxed until harvested, when they become subject to a graduated yield tax. A change in classification of the land results in the imposition of a penalty tax for the entire number of years that the land was classified as a forest.

3. Zoning Enabling Legislation

date enacted: 1925; numerous amendments

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[1] Source: Connecticut General Statutes Annotated (West Publishing Co., St. Paul, Minn.). Cumulative annual pocket parts and appendix pamphlets include laws enacted up to January 1, 1974.

statute: C.G.S.A. 8:1 to 13a

administered by: municipal legislative officials, board of appeals

summary: Authorizes municipal legislative officials to adopt, amend and enforce a zoning ordinance for the purpose of promoting the health, safety, morals or general welfare of the community. To enact a zoning ordinance, officials must follow certain detailed procedures. Once the ordinance has been adopted, the legislative officials are required to appoint a board of appeals to hear appeals and, in special cases, to grant variances to the ordinance.

4. Prohibition of Waterway Obstruction

date enacted: 1945; revised 1949; amended 1957, 1969

statute: C.G.S.A. 7:147

administered by: municipal legislative officials

summary: Enables municipalities to establish ordinance lines along any part of a waterway beyond which no one may place any permanent obstruction or encroachment without first obtaining written permission from legislative officials. Grievances may be taken to the court of common pleas.

5. Planning and Subdivision Regulation

date enacted: 1947; numerous revisions and amendments

statute: C.G.S.A. 8:18 to 30a

administered by: municipal legislative officials, local planning commission or planning and zoning commission, court of common pleas

summary: Authorizes municipal legislative officials to empower a planning commission or a planning and zoning commission to prepare, adopt and amend a plan of development for the community and also to adopt, amend and enforce a subdivision ordinance according to specific procedures. Grievances arising from subdivision regulations are taken to the court of common pleas.

6. Regulation of Dredging

date enacted: 1957; amended 1958, 1961, 1963, 1969, 1971

statute: C.G.S.A. 25:10 to 18

administered by: Commissioner of Environmental Protection (Department of Environmental Protection)

summary: Prohibits anyone from removing sand, gravel, or other material lying below the mean high water mark of the state's tidal and coastal waters without first obtaining a permit from the Commissioner.

Following a public hearing, the Commissioner may approve, deny or limit the proposed activity.

7. Conservation Commission Law

date enacted: 1961; amended 1963, 1969, 1971

statute: C.G.S.A. 7:131a

administered by: conservation commissions, municipal legislative officials

summary: Authorizes municipal legislative officials to appoint a three- to eleven-member conservation commission. The duties of the commission include: (1) preparing an index of all publicly or privately owned open areas; (2) advising local officials on matters relating to the conservation or development of such open areas; and (3) acquisition of open space easements with the approval of legislative officials.

A conservation commission may be designated as a municipal inland wetlands agency under the Inland Wetlands and Water Courses Act and will thereby be empowered to regulate development on wetlands (see no. 18 below.)

8. Farm, Forest and Open Space Current Use Tax Law

date enacted: 1963; amended 1971, 1973

statute: C.G.S.A. 12:107a to 107e

administered by: local assessor, state forester (Department of Agriculture, Conservation and Natural Resources), State Tax Commissioner (Department of Taxation), municipal planning commission

summary: Declares it to be in the public interest to encourage the preservation of farm, forest and open space land.

Upon application by the landowner and with the approval of the appropriate official(s), qualified farm, forest and open space land may be assessed for property tax purposes on the basis of its current use value rather than at its highest and best use. In order to qualify, farm land must be approved by the assessor, forest land must be approved by the state forester, and open space land must be so designated on a plan adopted by the municipal planning commission. Applications are filed on special forms prescribed by the State Tax Commissioner.

If land approved under this act is subsequently converted to uses other than those approved, the landowners are subject to a conveyance tax (see no. 17 below).

9. Regulation of Structures on Coastal or Navigable Waters

date enacted: 1963; amended 1963, 1965, 1969, 1971, 1974

statute: C.G.S.A. 25:7b to 7f

administered by: Commissioner of Environmental Protection (Department of Environmental Protection)

summary: Prohibits anyone from dredging, filling or building a structure in tidal, coastal or navigable waters of the state without first obtaining a permit from the Commissioner. After notifying the Commissioner of Transportation and the local planning commission, the Commissioner may grant, deny or limit a permit. Violation of this act may result in a fine of $15 to $50.

10. Open Space Easements and Taxation - Municipal

date enacted: 1963; amended 1971

statute: C.G.S.A. 7:131b

administered by: municipal administrative officials

summary: Grants municipalities the authority to purchase fee simple or lesser interests in land which has been designated as open space on a plan approved by the planning commission.

Any person whose use of land has been limited because of an open space easement may appeal to the local assessor for a property revaluation to reflect these restrictions.

11. Tidal Wetlands Protection

date enacted: 1969; amended 1971, 1972, 1973, 1974

statute: C.G.S.A. 22a:28 to 35

administered by: Commissioner of Environmental Protection (Department of Environmental Protection)

summary: Declares it to be the public policy of the state to preserve wetlands and to prevent their despoilation and destruction.

Prohibits anyone from draining, dredging, excavating or otherwise conducting a "regulated activity" on a tidal wetland without first obtaining a permit from the Commissioner. Following a public hearing, the Commissioner may approve, deny or impose limits on a permit.

Tidal wetlands include all land at or below an elevation of one foot above local extreme high tide.

The Commissioner is required to inventory and map all tidal wetlands in the state and to notify those landowners affected.

12. Regulation of Planned Unit Developments

date enacted: 1969

statute: C.G.S.A. 8:13b to 13k

administered by: planning commission, municipal legislative officials

summary: Grants planning commissions the authority to supervise

application procedures and to grant final approval to Planned Unit Developments, providing the municipality first adopts, by vote of its legislative body, an ordinance which includes the detailed regulations, procedures and other provisions set forth in this act.

13. Permit for Dam or Reservoir Construction

date enacted: 1971; amended 1973

statute: C.G.S.A. 25:110 to 118

administered by: Commissioner of Environmental Protection (Department of Environmental Protection)

summary: Prohibits anyone from constructing or altering a dam or reservoir without first applying for and obtaining a permit from the Commissioner. The Commissioner may approve, deny or limit a permit. Failure to comply may result in a $500 fine or injunction.

14. Environmental Protection and Statewide Planning

date enacted: 1971; amended 1973

statute: C.G.S.A. 22a:1 to 13

administered by: Commissioner of Environmental Protection (Department of Environmental Protection), Council on Environmental Quality

summary: Declares it public policy to conserve, improve and protect the state's natural resources and environment and to control air, land and water pollution.

Establishes the Department of Environmental Protection. Empowers the Commissioner to adopt, amend or repeal environmental standards, criteria and regulations in order to carry out the environmental policies of the state. A public hearing must be held and other requirements met before such standards or regulations can become law.

Directs the Commissioner to formulate and keep up to date a statewide environmental plan.

Establishes a nine-member autonomous Council on Environmental Quality. Council members are appointed by the Governor (5 members), the Speaker of the House (2 members) and the President of the Senate (2 members). The Council is required to annually submit an environmental quality report to the Governor describing the status of major environmental factors, such as the air, water and land. The Council is authorized to require any state agency to prepare plans and reports on construction plans for the Council's review. The Council's authority with regard to such plans or reports is advisory only.

15. "Environmental Protection Act of 1971"

date enacted: 1971

statute: C.G.S.A. 22a:14 to 20

administered by: court system

summary: Declares "that there is a public trust in the air, water and other natural resources of the state; . . . that each person is entitled to the protection, preservation and enhancement of the same; . . . [and] that it is in the public interest to provide all persons with an adequate remedy to protect the air, water and other natural resources from unreasonable pollution, impairment or destruction."

Provides that any person, public agency, private corporation, etc., may bring court action against any other person, etc., in order to protect the public trust in the air, water and other natural resources. The court is empowered to grant temporary or permanent equitable relief, or it may impose conditions on the defendant so as to protect the public trust.

16. Conservation and Preservation Restrictions

date enacted: 1971

statute: C.G.S.A. 47:42a to 42c

administered by: court system

summary: Authorizes governmental bodies, charitable organizations and trusts to acquire interests in real property for the purpose of limiting its use to scenic, natural or open space purposes (as in the case of conservation restrictions) or to architectural, archaeological or historical purposes (as in the case of preservation restrictions).

Conservation and preservation restrictions are imposed by deeds and may be enforced by injunction.

17. "Conveyance Tax on Sale of Land Classified as Farm, Forest or Open Space Land"

date enacted: 1972; amended 1974

statute: C.G.S.A. 12:504a to 504f

administered by: town clerk

summary: Any land classified as farm, forest or open space under the current use tax law (see no. 8 above, C.G.S.A. 12:107a to 107e) which is sold or put to a non-qualified use within a period of 10 years from the time of initial acquisition or classification is subject to a conveyance tax. This tax is applied to the total sales price of the land and amounts to 10 percent of the sales price if the land is sold or put to a non-qualified use during the first year of ownership or classification, 9 percent if sold the second year, 8 percent if sold the third year, . . . 1 percent if sold the tenth year. Land which has been converted to a non-qualified use is assigned its fair market value and treated as if there had been a conveyance. Certain conveyances are exempt from this statute.

This tax is in addition to the annual property tax.

18. "Inland Wetlands and Water Courses Act"

date enacted: 1972; amended 1973

statute: C.G.S.A. 22a:36 to 45

administered by: municipal inland wetlands agency, Commissioner of Environmental Protection (Department of Environmental Protection)

summary: Declares it to be in the public interest to preserve and protect the state's "wetlands and watercourses from random, unnecessary, undesirable and unregulated uses."

Authorizes municipalities to establish inland wetland agencies (appointed by the municipal governing body) for the purpose of regulating activities affecting the wetlands and water courses within their territorial boundaries. Wetlands are lands consisting of any of the soil types designated by the National Cooperative Soils Survey as poorly drained, very poorly drained, alluvial or flood plain.

These agencies are required to define the boundaries of wetlands and water courses within their jurisdiction and then, following a public hearing, to adopt rules to govern the use of such land. Once the boundaries have been defined and the regulations adopted, no one may proceed with a regulated activity until a public hearing has been held and a permit has been granted by the agency. Any owner denied a permit may appeal to the local assessor for a revaluation of his property to reflect the use restrictions imposed.

The Commissioner of Environmental Protection is directed to impose regulations restricting the use of wetlands in any municipality failing to adopt wetlands protection regulations by June 30, 1974.

19. Lower Connecticut River Area - Preservation

date enacted: 1973; amended 1974

statute: Public Act No. 73-349, unclassified (see appendix pamphlet, 1973)

administered by: Connecticut River Gateway Committee, Connecticut River Gateway Commission, Commissioner of Environmental Protection (Department of Environmental Protection), municipal legislative officials

summary: The Connecticut River Gateway Committee (composed of a representative from each of the towns affected, the Commissioner, and others) is directed to hold public hearings and then formulate minimum standards to regulate the use of land within the "conservation zone," an area comprised of portions of 8 towns located near the mouth of the Connecticut River. Once these minimum standards have been adopted, the municipal legislative officials of any town within the "conservation zone" may vote to adopt such standards, providing they also adopt the other provisions included in this act. Those towns adopting these provisions must promptly revise their zoning ordinances accordingly.

When at least five of the towns have adopted these provisions, a Connecticut River Gateway Commission shall be formed (composed of two representatives from each participating town, the Commissioner, and others). Thereafter, zoning ordinances which pertain to property within the "conservation zone" may not be amended or repealed without the prior approval of the Commission. Appeals regarding zoning restrictions on land within this district are taken to the Commission rather than to the local board of appeals.

The Commissioner of Environmental Protection, with the approval of the Commission, is authorized to acquire easements and development rights in the "conservation zone."

DELAWARE LAND-USE CONTROL LAWS

DELAWARE LAND-USE CONTROL LAWS[1]

1. Municipal Zoning Regulation

date enacted: 1923; amended 1935, 1970

statute: 22 Del. C. 301 to 331

administered by: municipal legislative officials, board of adjustment

summary: Authorizes municipal legislative officials to adopt, amend and enforce a zoning ordinance for the purpose of promoting the health, safety, morals and general welfare of the community. To adopt a zoning ordinance, officials must follow specific detailed procedures.

Once an ordinance has been adopted, the legislative officials are required to appoint a board of adjustment to hear appeals and, in special cases, to grant variances to the ordinance.

2. Tax Exemption for Forest Plantations

date enacted: 1935; amended 1970

statute: 7 Del. C. 3501 to 3508

administered by: State Forester (Department of Natural Resources and Environmental Control), county board of assessment

summary: Any landowner who establishes a commercial forest plantation of at least 5 acres, excluding stands of trees taller than 5 feet (except those left as seed trees) and excluding nurseries, and otherwise complies with the provisions of this act shall be entitled to a 30-year exemption from county property taxes on his plantation. After the landowner has applied for the forest plantation classification and the State Forester has approved the classification, the county board of assessment is directed to remove the land from the list of assessable property for the exempt period.

If the landowner voluntarily removes his land from the exempt status or if the State Forester recommends its removal because of a violation of this act's provisions, back taxes become due and payable by the owner.

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[1] Source: Delaware Code Annotated (Edward Thompson Co., Brooklyn, N.Y., and West Publishing Co., St. Paul, Minn.). Supplements include laws passed through the 1972 general assembly.

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3. Conservation Districts

date enacted: 1943; amended 1963, 1966, 1970

statute: 7 Del. C. 3901 to 3912

administered by: board of district supervisors, Department of Natural Resources and Environmental Control

summary: Authorizes the formation of conservation districts along county lines and the establishment of a board of district supervisors to govern these districts. The board of district supervisors, under the general supervision of the Department, is authorized to plan and carry out measures to prevent soil erosion, to control floodwater and sediment damage, and to establish other programs to conserve, develop and utilize land and water resources within the district.

The board of district supervisors also has a role in administering "tax ditches" (see no. 4 below).

A 1963 amendment granted the New Castle County Conservation District authority to assist urban and suburban landowners on their drainage problems through the organization of voluntary organizations known as "public ditches." These are different from tax ditches.

4. Drainage of Land - Tax Ditches

date enacted: 1951; amended 1953, 1955, 1966, 1968, 1970, 1971

statute: 7 Del. C. 4101 to 4194

administered by: board of district supervisors, State Drainage Engineer, Department of Natural Resources and Environmental Control, board of ditch commissioners, resident associate judge, county superior court, board of assessment, receiver of taxes and county treasurer, ditch managers

summary: Declares it state policy and to be of public benefit to drain and prevent the flooding of low, wet, swampy or overflowed land or land subject to overflow.

The act establishes a uniform drainage law for the state by providing a procedure for the establishment, financing, administration and maintenance of "tax ditch" organizations.

One or more persons desiring to drain or protect their land from flooding may petition the county superior court for the purpose of forming a tax ditch organization. The tax ditch proposal may be approved or denied following an elaborate procedure calling for public hearings and involving numerous state and county officials. If approved, the operation is financed by taxes levied on landowners within the district and administered by elected ditch managers.

5. Planning and Subdivision Regulation - Municipal

date enacted: 1953

statute: 22 Del. C. 701 to 711

administered by: municipal legislative officials, planning commission

summary: Authorizes municipal legislative officials to appoint a five- to nine-member planning commission whose principal duties include the preparation of a comprehensive development plan, an official map and reports to local officials regarding proposed subdivisions. Once the official map has been approved by the local legislative officials, it becomes law. Variances to the official map (e.g., plats, roads, and subdivisions) can only be granted following a public hearing and approval by a two-thirds vote of the local legislature.

6. "Delaware River Basin Compact" - Flood Plain Zoning

date enacted: 1961

statute: 7 Del. C. 6501 to 6513

administered by: Delaware River Basin Commission (signatories include Delaware, Pennsylvania, New Jersey and New York and the U.S.A.)

summary: Authorizes the Commission to study and determine the nature and extent of the flood plains of the Delaware River and its tributaries and, on the basis of such studies, to classify land and establish standards for flood plain use, pollution control, and domestic, municipal and agricultural water supply development. Prior to the adoption of such regulations, the Commission is required to hold public hearings.

7. State Aid for Acquisition of Land for Parks, Open Space, etc.

date enacted: 1964; amended 1970

statute: 7 Del. C. 5801 to 5809

administered by: Department of Natural Resources and Environmental Control, State Planning Office, county levy courts, City of Wilmington

summary: Appropriates $3,250,000 from the Capital Investment Fund to be used to acquire land for conservation purposes. The money is apportioned to the Department, the county levy courts and the City of Wilmington according to percentages specified in the act. These funds are made available to the counties or the city on a matching basis following the approval of the Department. The county or city must put up 25 percent of the purchase price of the land. Department proposals must be approved by the State Planning Office.

Once land has been acquired with these funds, it cannot be converted to uses other than those originally intended without the approval of the State Planning Office.

These funds cannot be used to acquire land by eminent domain.

8. Subdivision Regulation - New Castle County

date enacted: 1965; amended 1970

statute: 9 Del. C. 3001 to 3012

administered by: Levy Court of New Castle County, Regional Planning Commission of New Castle County

summary: Authorizes the Regional Planning Commission of New Castle County to adopt subdivision regulations in order to control the subdivision of all lands in the county outside the boudaries of cities and towns. Prior to the adoption of these regulations, public hearings must be held and the proposed controls must be approved by the Levy Court.

Prohibits the issuance of a building or occupany permit until the necessary subdivision approval has been granted.

9. Regulation of Water Resources

date enacted: 1966

statute: 7 Del. C. 6101 to 6106

administered by: Delaware Water and Air Resources Commission (Department of Natural Resources and Environmental Control)

summary: Authorizes the Commission to formulate and adopt a statewide comprehensive master water plan, to adopt regulations governing surface and underground water resources, and to effectuate the Delaware River Basin Compact (see no. 6 above). Requires Department approval for all new impounding and water facilities construction by all public and private water users in the state.

10. Planning and Subdivision Regulation - All Counties

date enacted: 1967

statute: 9 Del. C. 1341 to 1353

administered by: county department of planning, county planning board, county council, county executive, board of adjustment, levy court

summary: Authorizes counties to prepare comprehensive plans and to formulate and adopt regulations governing the subdivision of land within their jurisdiction. To carry out these provisions each county is authorized to establish a department of planning and a planning board.

Prohibits the issuance of building and occupancy permits in any subdivision until such plat has been approved by the planning board and the levy court.

A board of adjustment is established to hear grievances and, in special situations, to grant variances or permits.

11. Zoning Regulation - Sussex County

date enacted: 1967

statute: 9 Del. C. 6901 to 6923

administered by: Levy Court of Sussex County, Planning and Zoning Commission of Sussex County, Sussex County Board of Adjustment

summary: Authorizes the Levy Court of Sussex County to appoint a five-member County Planning and Zoning Commission for the purpose of formulating and administering a zoning ordinance for unincorporated portions of the county. The ordinance must be in accordance with the county Comprehensive Development Plan. If, following a public hearing, the ordinance is approved by the Levy Court, it becomes law.

Upon the adoption of an ordinance, the Levy Court must appoint a Board of Adjustment to hear appeals and, in special cases, to grant variances to the ordinance.

12. Approval of Subdivision, Plats, and Land Development Plans - Kent County

date enacted: 1967; amended 1968, 1970

statute: 9 Del. C. 4810 to 4818

administered by: Regional Planning Commission of Kent County, Levy Court of Kent County

summary: Requires that all plats and subdivisions must be approved by the Commission and the Levy Court of Kent County before they are recorded by the Recorder of Deeds. Subdivision plans must be approved by the Levy Court before development begins. The issuance of building or occupancy permits is prohibited until subdivision approval has been granted.

The Regional Planning Commission is directed to develop a master plan and an official map.

13. Zoning Regulation - Kent County

date enacted: 1967

statute: 9 Del. C. 4901 to 4923

administered by: Levy Court of Kent County, Kent County Zoning Commission, Kent County Board of Adjustment

summary: Authorizes the Levy Court of Kent County to appoint a five-member zoning commission for the purpose of formulating and administering a zoning ordinance. The proposed ordinance must be approved by the Levy Court before it becomes law.

Once an ordinance has been adopted, the Levy Court is required to appoint a board of adjustment to hear appeals and, in special cases, to grant variances to the ordinance.

14. Current Land-Use Taxation

date enacted: 1968; amended 1970

statute: 9 Del. C. 8330 to 8331-D

administered by: district tax assessor, State Forester (Department of Natural Resources and Environmental Control), State Farmland Evaluation Advisors Committee (Department of Agriculture)

summary: Upon application by the owner and approval by the assessor, qualified agricultural, horticultural or forest land (forest land approval is by the State Forester) may be assessed for property tax purposes on the basis of its current use value rather than at its highest and best value. The owner must apply annually on forms prescribed by the State Farmland Evaluation Advisors Committee. The Committee is directed to annually prepare and make available to assessors ranges in value for agricultural, horticultural and forest uses based on the land's productive capabilities.

A 1973 amendment added a 2-year roll-back provision.

15. "Coastal Zone Act"

date enacted: 1971

statute: 7 Del. C. 7001 to 7014

administered by: State Planner (State Planning Office), State Coastal Zone Industrial Control Board, municipal zoning authority

summary: Strictly prohibits the construction of new "heavy industry" (i.e., oil refineries, chemical plants, basic steel manufacturing plants, etc.) within a two-mile-wide strip along the coast defined as the "coastal zone." Offshore unloading facilities are also banned. The construction of new manufacturing plants (not heavy industry) or the expansion of existing such facilities is allowed by permit only.

Applications for manufacturing use permits are submitted to the State Planning Office and must be accompanied by: (1) evidence of approval by the appropriate county or municipal zoning authority, (2) a description of the proposed activity and (3) an environmental impact statement. Within 90 days after receiving an application, the State Planner is directed to either grant the request, deny it, or grant the request with modifications.

Anyone aggrieved by a decision of the State Planner may appeal such decision to the State Coastal Zone Industrial Control Board created by this act. The Board has the power to affirm, reverse, or modify a decision, except that it may not permit new heavy industry.

If it is found that the denial of a permit would constitute a taking, the Secretary of the Department of Environmental Control is authorized to condemn a fee simple or lesser estate.

Violation of this act may result in a fine of up to $50,000.

16. "The Wetlands Act"[2]

date enacted: 1973

statute: 7 Del. C. 6601 to 6622

administered by: Secretary of the Department of Natural Resources and Environmental Control, Wetlands Appeals Board

summary: Declares it to be public policy to preserve and protect the state's wetlands in a manner consistent with the historic right of private ownership. Wetlands are coastal areas between mean low tide and two feet above mean high tide which are capable of growing certain specified indicator plants, and inland wet areas as identified by the Secretary.

Directs the Secretary to prepare a map of all the wetlands in the state. Following a public hearing, the Secretary may adopt the map and regulations to control wetland use.

Prohibits anyone from dredging, filling or conducting other regulated activities on any wetland without first obtaining approval from the appropriate county or municipal officials and then a permit from the Secretary. A description of the proposal must accompany the permit application. After following a specific procedure, the Secretary may issue or deny the permit. The Secretary is authorized to use the power of condemnation to acquire a fee simple or lesser estate. A decision of the Secretary may be appealed to the Wetlands Appeals Board.

Violation of this act may result in fines up to $10,000, and in addition the owner may be required to restore the wetlands to their prior condition.

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[2] Session laws of Delaware, 1973, Vol. 59, Ch. 213.

MAINE LAND-USE CONTROL LAWS

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MAINE LAND-USE CONTROL LAWS[1]

1. Draining Marshes, Meadows and Swampland

date enacted: 1881; numerous amendments

statute: M.R.S.A. 30:3251 to 3403

administered by: county superior court, appointed commissioners

summary: Establishes a procedure whereby landowners share the cost of draining jointly owned wetlands.

A majority of the landowners of the wetland in question must submit an application to the superior court setting forth the proposed "improvements." If the court determines that such "improvements" are in the best interests of the landowners, then it appoints a committee of three commissioners to administer the operation. Construction and maintenance costs are financed by means of a tax levied on each of the landowners according to benefits received.

2. Zoning Enabling Legislation - Municipal

date enacted: 1925; repealed and re-enacted 1971; amended 1972, 1973, 1974

statute: M.R.S.A. 30:4961 to 4964

administered by: municipal legislative officials, board of appeals

summary: Enables legislative officials in municipalities which have adopted home rule to adopt, amend and enforce a zoning ordinance, providing it is consistent with an adopted comprehensive plan. Municipalities which enact such an ordinance are required to establish a board of appeals. The duties of the board include hearing appeals and, in special cases, granting variances to the ordinance.

Rezoning for the purpose of development may not be approved except in accordance with an architect's plan and until a performance bond is posted in an amount equal to at least 25 percent of the estimated cost of the development.

Zoning ordinances are advisory with respect to the state.

Ordinances adopted previous to the 1971 change may remain in effect until abolished or repealed.

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[1] Source: Maine Revised Statutes Annotated (West Publishing Co., St. Paul, Minn.). Pocket supplements and advance sheets include laws passed through March 29, 1974.

p. 42 blank

3. Subdivision Regulation

date enacted: 1943; recodified 1957; repealed and re-enacted 1971; partially repealed and re-enacted 1973; amended 1974

statute: M.R.S.A. 30:4956

administered by: municipal planning board or, if none, the municipal reviewing authority; municipal legislative officials

summary: Enables the planning board or, if none, the reviewing authority to adopt subdivision regulations following a public hearing. A series of guidelines for the promulgation of these regulations is set forth in the act. Legislative officials may adopt, amend or repeal subdivision regulations superseding those adopted by the board or agency. A subdivision is defined as a division of a tract of land into 3 or more lots of less than 40 acres each within any five-year period. Administration of subdivision regulations is by the board or agency.

Prohibits anyone from selling land in any subdivision until the subdivision has first been approved by the board or agency and recorded in the local register of deeds.

Anyone selling or offering for sale a lot in an unapproved subdivision is subject to a fine of up to $1000.

4. Obstruction of Waterways

date enacted: 1947

statute: M.R.S.A. 12:2203

administered by: Commissioner of Inland Fish and Game

summary: Prohibits anyone from constructing a dam or otherwise obstructing a waterway without first filing written notice with the Commissioner.

5. Forest Land Assessment Policy

date enacted: 1953; amended 1955

statute: M.R.S.A. 36:563 to 564

administered by: court system

summary: Declares it to be a public policy to provide adequate incentives to encourage forest land owners to maintain their forests on a sustained yield basis.

"An assessment of forest land for purposes of taxation shall be held to be in excess of just value by any court . . . upon proof by the owner that the tax burden imposed by the assessment creates an incentive to abandon the land, or to strip the land or otherwise contrary to the public policy."

6. Waterways Protection

date enacted: 1954; amended 1957, 1971

statute: M.R.S.A. 12:2205

administered by: Commissioner of the Department of Inland Fish and Game

summary: Prohibits bulldozing, filling or dredging between the banks of navigable waterways without the issuance of a permit from the Commissioner. Public works projects altering less than 200 feet of shore and private crossings or dam projects which alter less than 100 feet of shore are exempt from this section.

7. Conservation Commission Act

date enacted: 1965; amended 1969, 1970, 1971

statute: M.R.S.A. 30:3851

administered by: municipal legislative officials, conservation commission

summary: Authorizes municipal legislative officials to appoint a five-member conservation commission. The powers and duties of the commission include: (1) care of and superintendence of public parks; (2) preparation of an index of all publicly and privately owned open space areas within the municipality; (3) advising local officials on matters relating to the conservation, preservation or development of natural resources; and (4) acquisition of fee simple and lesser interests in open space land and water areas within the community.

8. Coastal Wetlands Protection

date enacted: 1967; amended 1971, 1973

statute: M.R.S.A. 12:4701 to 4709

administered by: Board of Environmental Protection (Department of Environmental Protection), local municipal officials, county commissioners

summary: Prohibits anyone from filling, dredging, draining or otherwise altering any coastal wetland without first obtaining a permit from the local municipal officials, or in unorganized areas from county commissioners. Permission must also be granted by the Board. A "coastal wetland is defined as any swamp, marsh, bog, beach, flat or other contiguous lowland above extreme low water which is subject to tidal action or normal storm flowage at any time excepting periods of maximum storm activity."

After receiving a notice of intent, and following a public hearing, the permit may be granted, denied or granted with certain restrictions by either the municipal officials or the Board.

Anyone violating any provisions of this act may be subject to a fine of up to $500.

9. Land Use Control in Unorganized Territory

date enacted: 1969; amended 1971, 1973

statute: M.R.S.A. 12:681 to 689

administered by: Land Use Regulation Commission (Department of Conservation)

summary: Establishes the Land Use Regulation Commission (LURC) to administer this act and to extend the "principles of sound planning and subdivision control to the unorganized townships of the state." LURC is required to prepare and adopt a comprehensive plan by 1975 to guide it in executing its other duties.

LURC is charged with designating land in the unorganized areas into three major land use districts: (a) protection districts, "where development would jeopardize significant natural, recreational, and historic resources . . ."; (b) management districts, which are appropriate for commercial forest product or agricultural uses (future development is not planned or anticipated); (c) development districts, areas for residential, commercial, recreational or industrial uses. LURC is further directed to formulate land use regulations for each of the districts according to guidelines specified in the act. Agricultural and forestry practices are not regulated in management districts by this act.

Before any construction or development may take place in the districts (other than normal maintenace or repair), the person proposing such activity must apply for and obtain a permit from the Commission. When approving permits, LURC is authorized to impose reasonable conditions. It is also authorized to acquire conservation easements.

10. Conservation Restrictions

date enacted: 1970

statute: M.R.S.A. 33:667 to 668

administered by: court system

summary: Authorizes governmental bodies to acquire interests in land or water for the purpose of retaining these areas in their natural, scenic, open or wooded condition or to prevent or limit: structures, landfilling, vegetation destruction or removal, excavation of earth, and similar activities.

Restrictions are imposed by deeds and may be enforced by injunction.

11. "Site Location of Development"

date enacted: 1970; amended 1971, 1972, 1973

statute: M.R.S.A. 38:481 to 488

administered by: Board of Environmental Protection (Department of Environmental Protection)

summary: The purpose of this act is to provide a means by which the police power of the state may be exercised "to control the location of those developments substantially affecting (the) local environment."

The Board must approve all development that:

a) otherwise requires a license from the Board (e.g., for waste discharge, air pollution),
b) occupies a land or water area in excess of 20 acres,
c) engages in the removal of natural resources,
d) occupies a structure of over 60,000 square feet floor area, or
e) involves the subdivision of land into five or more lots covering an area of more than 20 acres.

Within 30 days after receiving a notice of intent concerning a restricted development, the Board must act on the request by granting, denying or limiting it. The applicant may appeal the Board's decision before a public hearing.

12. "Mandatory Zoning and Subdivision Control" - Shoreland Areas

date enacted: 1971; amended 1973

statute: M.R.S.A. 12:4811 to 4814

administered by: local planning board, State Planning Office, Land Use Regulation Commission (Department of Conservation), Board of Environmental Protection (Department of Environmental Protection)

summary: Requires each municipality to adopt zoning and subdivision regulations and a comprehensive plan for land within 250 feet of any pond (greater than 10 acres), river or body of salt water by July 1, 1974. The regulations must be in accordance with guidelines set forth by the Board and Commission and pursuant to a comprehensive plan.

If a municipality fails to adopt adequate regulations by the specified date, the Board and the Commission are directed to step in and impose land use controls for these areas under the administrative direction of the State Planning Office.

13. Coastal Wetland Zoning

date enacted: 1971; amended 1973

statute: M.R.S.A. 12:4751 to 4758

administered by: Board of Environmental Protection (Department of Environmental Protection)

summary: Authorizes the Board to establish rules to restrict or prohibit anyone from dredging, filling, polluting or otherwise altering any coastal wetland. (For the definition of coastal wetland see no. 8 above.) Before the Board may adopt such regulations it must notify the affected

landowners and hold a public hearing.

When an order has been adopted, it must be recorded in the county registry of deeds. Appeal from an order of the Board is to the superior court.

14. Roadside Forest Practices

date enacted: 1971; amended 1973

statute: M.R.S.A. 12:519

administered by: Bureau of Forestry (Department of Conservation)

summary: Prohibits clear cutting as a forestry practice within 100 feet of the right-of-way of a numbered highway. Clear cutting for agriculture; for residential, commercial and other non-woodland purposes; for beautification and for certain other purposes is not regulated by this act.

Violation of the act may result in a fine of up to $1,000.

15. "Farm and Open Space Land Law" - Current Use Taxation

date enacted: 1971; amended 1972

statute: M.R.S.A. 36:585 to 594

administered by: local tax assessor and local planning board in municipalities; State Tax Assessor and Land Use Regulation Commission in unorganized territories

summary: Declares it to be public policy to encourage the preservation of farmland and open space and to conserve the natural resources of the state.

Upon application by the landowner and the approval of the appropriate assessing authority, qualified farmland and open space land shall be assessed for property tax purposes at its current use value rather than at its highest and best value. The open space classification must be approved by the planning board or, in unorganized areas, by the Land Use Regulation Commission.

If land approved under this act is subsequently converted to uses other than farming or open space, a roll-back clause takes effect and additional taxes become due and payable by the landowner. Roll-back taxes are due for each of the preceding years of classificiation, but not to exceed ten years for open space land or fifteen years for farmland.

The act also empowers municipalities to acquire scenic easements and development rights.

16. "Maine Tree Growth Tax Law"

date enacted: 1972; amended 1973

statute: M.R.S.A. 36:571 to 584

administered by: municipal tax assessor, State Tax Assessor (Department of Finance and Administration), Forestry Appeal Board, State Board of Assessment Review, Forest Land Valuation Advisory Council

summary: The purpose of this act is to encourage "forest landowners to retain and improve their holdings of forest land . . . and to promote better forest management . . . [by] taxing forest lands gnerally suitable for . . . continuous growth of forest products on the basis of their potential for annual wood production."

Owners of forest land who wish to have their holdings covered under this act must apply to the local assessor (State Tax Assessor in unorganized areas) on forms prescribed by the State Tax Assessor. The act is not applicable to holdings smaller than 10 acres; holdings greater than 500 acres qualify automatically; holdings that range from 10 to 500 acres must be approved by the assessor.

The values per acre of annual wood production for each of several forest types in each of the counties of the state are to be determined by the State Tax Assessor. Following public hearings, this information is to be made available to municipal assessors to be used in computing the annual taxes on approved forest tracts.

In certain cases, municipalities may recover from the state a portion of the taxes that may have been lost because of reduced assessments on forest lands approved under this act.

If approved forest land is subsequently converted to uses inconsistent with the stated purposes of this act, then a penalty clause takes effect and additional taxes become due and payable by the owner.

Appeals are made to the State Tax Assessor, the Forestry Appeals Board, or the State Board of Assessment Review.

A Forest Land Valuation Advisory Council is formed for the purpose of informing and advising the State Tax Assessor regarding the administration of this act.

17. Great Ponds Protection - Dredging

date enacted: 1972; amended 1973

statute: M.R.S.A. 38:422

administered by: Board of Environmental Protection (Department of Environmental Protection)

summary: Prohibits the "construction and maintenance of causeways, bridges, marinas, wharves and permanent structures or [the] deposit of fill in, on, over or abutting on great ponds or dredging in great ponds" without first obtaining a permit from the Board. Authorizes the Board to adopt or amend regulations concerning dredging permits.

Great ponds are defined as natural inland bodies of water with a surface area greater than 10 acres and man-made bodies of water greater than 30 acres which are owned by more than two persons.

18. Great Ponds Protection - Classification

date enacted: 1973

statute: M.R.S.A. 38:380 to 385

administered by: Board of Environmental Protection (Department of Environmental Protection)

summary: Requires the Board to classify great ponds (for definition see no. 17 above) according to their trophic conditions and stage of trophic development. Following a public hearing, the Board may establish guidelines for sewage disposal and other waste control systems to prevent environmental damage to great ponds in each category.

19. Alteration of Rivers, Streams and Brooks

date enacted: 1973

statute: M.R.S.A. 12:2206 to 2212

administered by: Commissioner of the Department of Inland Fish and Game

summary: Prohibits anyone from dredging, filling or erecting a permanent structure on or abutting any river, stream or brook without first obtaining a permit from the Commissioner. The act sets forth standards for use in determining whether or not a permit should be granted.

Violators are punished by a fine of from $100 to $200 for each day of violation and may be compelled by the Attorney General to restore the disturbed area to its prior condition.

20. State "Minimum Lot Size"

date enacted: 1973; amended 1974

statute: M.R.S.A. 12:4807 to 4807-G

administered by: Board of Environmental Protection (Department of Environmental Protection)

summary: Establishes statewide minimum lot sizes for single and multiple family residential housing units that have in-ground sewage treatment facilities. Minimum frontages are also established for units abutting on lakes, ponds, tidal areas or streams.

Anyone wishing to place a residential unit on a site smaller than that which is specified in this act must first obtain a permit from the Board. Minimum lot size for a single family residential unit is 20,000 square feet; multiple family units are larger.

Anyone who violates a provision of this act is subject to a fine of up to $1000 per day.

21. Recording of Land Restrictions

date enacted: 1973

statute: M.R.S.A. 33:662-A

administered by: county or district registry of deeds

summary: Requires municipalities that adopt ordinances relating to land control to file a certified copy of these ordinances with the registry of deeds in the county where located.

22. "Act for a State Register of Critical Areas"

date enacted: April 1974

statute: M.R.S.A. 5:3310 to 3314

administered by: State Planning Office, State Critical Areas Advisory Board

summary: Declares it public policy to encourage the preservation and utilization of "critical areas" through land planning, regulation and protective acquisition or management. Critical areas are "areas containing or potentially containing plant and animal life or geological features worthy of preservation in their natural condition, or other natural features of significant scenic, scientific or historical value."

Directs the Planning Office, with the advice and approval of a newly created, governor-appointed Critical Areas Advisory Board, to establish and maintain a "Register of Critical Areas." The Board and the Planning Office are directed to consider certain factors in the process as set forth in the act.

Before an area may be classified as a critical area, the landowner must be given at least 60 days notice. The Planning Office must recommend to the appropriate state agencies (which have the authority to acquire property rights through device, gift, purchase or otherwise) the acquisition of property rights or the establishment of management agreements to insure the preservation of the critical area.

Areas may not be removed from the critical areas register unless, after consulting the Board, the Planning Office finds such protection is no longer appropriate.

MARYLAND LAND-USE CONTROL LAWS

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MARYLAND LAND-USE CONTROL LAWS[1]

1. Drainage Associations

date enacted: 1858; numerous amendments

statute: A.C.M. 25:52 to 95

administered by: board of county commissioners, board of managers, board of drainage viewers

summary: Authorizes the board of county commissioners in each of the counties of the state to establish public drainage associations and to locate and establish ditches, drains or canals for the purpose of draining wetlands. The drainage of wetlands is considered, by this act, to be a public benefit and conducive to the public health, convenience and welfare.

The procedure to establish a drainage association is set in motion when a petition describing the proposed activity and signed by at least one-third of the owners of the wetland is submitted to the county commissioners.

When a drainage association has been approved by the board of county commissioners, a board of managers is elected or appointed to administer the association. The board of managers is given the power of condemnation.

Construction and maintenance costs are financed by a tax which is imposed on landowners according to the benefits accruing to each, or by the issuance of drainage bonds.

2. Drainage Districts

date enacted: 1912; numerous amendments

statute: A.C.M. 25:96 to 122

administered by: board of county commissioners, board of drainage commissioners

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[1] Source: The Annotated Code of the Public General Laws of Maryland (The Michie Co., Charlottesville, Va.); cumulative supplements include laws passed through the 1974 general session.

note: In 1973 during a special session the Maryland legislature began a complete re-codification of the state's public laws. At the end of the 1974 session this process was still only partially completed. As a consequence the laws not re-codified are still identified by title numbers, whereas those codified uner the new system have been assigned title names, (e.g., Natural Resources).

p. 54 blank

summary: Authorizes the board of county commissioners of any county to establish a levee or drainage district and to locate and establish levees, drains or canals and to erect tidewater gates and pumping plants for the purpose of draining and reclaiming wetlands. The drainage of water from agricultural lands and the reclamation of tidal marshes is considered "a public benefit and conducive to the public health, convenience, utility, and welfare."

The procedures for forming and financing drainage districts are similar to those described for drainage associations (see no. 1 above).

3. Zoning Enabling Legislation

date enacted: 1933; numerous amendments

statute: A.C.M. 66B:4.01 to 4.08

administered by: municipal or county legislative body, board of appeals

summary: Authorizes municipal and county legislative officials to adopt, amend and enforce a zoning ordinance for the purpose of promoting the health, safety, morals or general welfare of the community. To enact a zoning ordinance, officials must follow certain standard procedures. Once an ordinance has been adopted, the legislative officials are required to appoint a board of appeals to hear appeals and, in special cases, to grant variances to the ordinance.

4. Subdivision Regulation

date enacted: 1933; numerous amendments

statute: A.C.M. 66B:5.01 to 5.07

administered by: local planning commission

summary: Authorizes municipal legislative officials to empower a planning commission to adopt, amend and enforce subdivision regulations according to certain standard procedures.

5. "Maryland Soil Conservation Districts Law"

date enacted: 1937; amended 1939, 1951, 1971, 1972; re-codified 1973; amended 1974

statute: A.C.M. Agriculture 8-101 to 8-501

administered by: soil conservation district supervisor, state Soil Conservation Committee

summary: Provides for the establishment of soil conservation districts and authorizes the supervisors of such districts to formulate and adopt regulations to govern the use of lands within the district in the interest of conserving soil resources and preventing and controlling erosion. Before an ordinance containing such regulations may become law, it must first be approved by a majority of the district's voters, following a public hearing. Once approved, the regulations become binding on all occupiers of land within the district.

A 1973 amendment empowers the supervisors to approve or disapprove plans for clearing, grading, transporting or otherwise disturbing soil which are submitted pursuant to the Sediment Control Law (see no. 14 below).

A state Soil Conservation Committee is established to coordinate the activities of the several districts.

6. Forestry Conservancy Districts

date enacted: 1943; amended 1945, 1951, 1972; re-codified 1973; amended 1974

statute: A.C.M. Natural Resources 5-601 to 5-610

administered by: Commissioner, Board of Review (Department of Natural Resources), district forestry board.

summary: Declares it to be public policy to encourage the management of private and public forests to maintain, conserve and improve the soil resources of the state and to help insure an adequate source of forest products for future generations. Authorizes the Commissioner to prepare, adopt and enforce regulations consistent with the public policy.

The state is divided into forestry conservancy districts, each with its own administrative board. Each board is authorized to formulate regulations and, following a public hearing and with the approval of the Commissioner, to adopt regulations to govern forestry practices within the district. The controls may prohibit clear cutting as a forestry practice where such practice would interfere with the protection of a watershed or to insure natural forest reproduction.

Requires anyone engaged in a forest products business to obtain a license from the Department. Persons obtaining a license are required to conform to certain conservation regulations as set forth in this act or as may be promulgated by the Department. The cutting of firewood and timber for personal use is not prohibited by this act. It also does not apply to clear cutting for agricultural or other development purposes.

Anyone aggrieved by any order or decision of the Department may appeal to the Board of Review.

7. Use Value Assessment of Farmland, Woodland, Country Clubs and Planned Development Land

date enacted: 1956; numerous amendments (as originally passed, pertained only to farmland)

statute: A.C.M. 81:19

administered by: Department of Assessment and Taxation, local assessor

summary: In general, provides that "in valuing and assessing real estate, the land itself and the buildings or other improvements thereon shall be valued and assessed separately; . . . land may be reassessed whenever it has been subdivided or the character or use is changed . . . ".

A 1974 amendment provides that "any land on which an easement or

other interest which has been conveyed or assigned to the Nature Conservancy or to the federal, State or local government or agency thereof, and which limits the use of the land in manner to preserve the natural open character in perpetuity or for a fixed period of time, shall be valued to give effect to the limitation on the use."

The act separates land which may qualify for use value assessment into four categories: (1) farm or agricultural land, (2) woodland, (3) country clubs and (4) planned development land. Specific requirements are set forth for each.

The major provisions of each are briefly described below.

(1) Land devoted to farm or agricultural use is assessed according to its present use and not as if subdivided. Land which has been subdivided into lots or which has been zoned as industrial, commercial or multi-family residential at the request of the owner cannot qualify. Once land has been assessed on the basis of its agricultural use, it cannot be developed for a period of three years after the last day of the most recent taxable year unless the owner pays a penalty tax. The penalty is twice the difference between the tax due at full value and the tax assessed according to the agricultural use value.

(2) Woodlands are assessed in accordance with A.C.M. Natural Resources 5-301 to 5-308 (see no. 10 below).

(3) Country clubs which cover an area of not less than 500 acres, consist of at least nine holes, do not practice discrimination in granting membership, and meet other requirements may enter into agreements with the Department for a specific period during which time the land is assessed on the basis of its present use value. If the land is subsequently converted to a use inconsistent with this classification, then back taxes become due according to provisions set forth in this subsection.

(4) Planned development land which consists of at least 500 acres; appears on a current, government-adopted master plan as a new town, satellite city or city and is primarily undeveloped shall be assessed according to its agricultural use value, even though it may not qualify for agricultural use assessment. When any of this land is subdivided and developed it loses its agricultural tax status, but the remaining undeveloped portion of land retains such status even though it may now consist of less than 500 acres. If land is rezoned at the request of the owner, then "roll-back" taxes become due according to the provisions of this subsection.

8. Public Watershed Associations

date enacted: 1959; amended 1966, 1973

statute: A.C.M. 25:169 to 218

administered by: board of county commissioners, board of directors

summary: Authorizes the board of county commissioners to establish associations for the purpose of constructing, operating, maintaining and carrying out works of improvement for watershed protection, soil conservation, drainage, flood prevention, etc., within the watershed area. A procedure for establishing these associations is set forth in the act.

9. Preservation of Open Space

date enacted: 1960; amended 1965, 1966, 1967, 1968; re-codified 1973

statute: A.C.M. Natural Resources 5-1202

administered by: counties, cities, Maryland-National Capital Park and Planning Commission, State Department of Forests and Parks

summary: Authorizes counties, cities, the Maryland-National Capital Park and Planning Commission, and the State Department of Forests and Parks to acquire interests in real property for the purpose of preserving open space. Open space is defined as "any space or area (1) characterized by great natural scenic beauty or (2) whose existing openness, natural condition, and present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources."

Prohibits the condemnation of actively farmed land for purposes of open space preservation.

10. "Conservation of Woodland Areas"

date enacted: 1963; re-codified 1973; amended 1974

statute: A.C.M. Natural Resources 5-301 to 5-308

administered by: Department of Forests and Parks

summary: Establishes a program of forest conservation and management for the purpose of encouraging the people "to keep or develop lands for productive woodland purposes, . . . to prevent floods and the wasting of . . . soil [and] to provide open and wooded areas for the use and enjoyment of residents and sojourners . . . ". Under the program, any owner of five or more acres of forest land may enter into a contract with the Department whereby the owner agrees to use his land in a manner consistent with the purposes of this act for a specified length of time. During the contract period, the assessed valuation of the land may not be increased by any taxing unit.

A new valuation of the tract or part of the tract for assessment purposes shall be made (a) at the termination of the contract, (b) at the time of harvest, or (c) at the time of conveyance to another owner who does not assume obligations of the contract. If the new valuation is greater than the old, a revised tax bill must be computed by allocating the increased value in (approximately equal annual increments from the date of contract to termination) and multiplying it by the tax rate for the respective years.

11. Tax Credits for Open Space Land

date enacted: 1965; amended 1966, 1967, 1968, 1969, 1970

statute: A.C.M. 81:12E

administered by: board of county commissioners, county council, mayor and city council, municipalities

summary: This act provides for and regulates the granting of tax credits for open space land. (For the definition of "open space" see no. 9 above.)

In order to encourage the preservation of open space, counties, cities and municipalities are authorized to adopt ordinances which grant tax credits in amounts up to 100 percent on land whose use is limited because of open space easements or contracts. They may also designate functional or geographical categories of open space land to which tax credits may be applied. Such categories may include: flood plain land, conservation areas, country clubs, woodlands, commercial golf courses, and golf driving ranges. Tax credits must be applied uniformly to all lands within each category.

12. Strip Mine Regulation

date enacted: 1967; amended 1969, 1973; re-codified 1973; amended 1974

statute: A.C.M. Natural Resources 7-501 to 7-516

administered by: Bureau of Mines (Department of Natural Resources), Land Reclamation Committee

summary: Employs the police power of the state to regulate the strip mining of coal. Authorizes the Bureau to promulgate and enforce rules and regulations necessary to prevent or repair damage resulting from strip mining.

Prohibits anyone from strip mining coal without first applying for and obtaining a license and a permit from the Bureau. Permits are issued only to licensed operators. The permit application must be accompanied by: (1) a map, plan or photograph of the area; (2) a detailed mined and reclamation plan; (3) a reclamation fee of $30 for each acre of land affected; (4) a performance bond of $400 per acre; (5) a revegetation bond of not less than $50 for each acre affected (exact amount to be determined by the Committee); and (6) other information as may be required.

Failure to comply with any provisions of this act may result in the denial of future licenses. Violations of any rules promulgated by the Bureau are subject to fines of from $5,000 to $10,000.

13. "Susquehanna River Basin Compact" - Flood Plain Regulation

date enacted: 1967; re-codified 1973

statute: A.C.M. Natural Resources 8-301

administered by: Susquehanna River Basin Commission (signatories: Maryland, New York, Pennsylvania and U.S.A.)

summary: Authorizes the Commission to "study and determine the nature and extent of the flood plains of the Susquehanna River and its tributaries" and, on the basis of such studies, to classify land and establish standards and regulations for flood plain use and water quality control. Before these controls may become effective, the Commission must hold public hearings and obtain the consent of the signatories.

14. "Sediment Control Law"

date enacted: 1970; amended 1971, 1972, 1973; re-codified 1973

statute: A.C.M. Natural Resources 8-1101 to 8-1108

administered by: Department of Natural Resources, soil conservation district, Bureau of Public Works

summary: Prohibits anyone from clearing, grading or otherwise disturbing land for purposes such as the mining of minerals, development of golf courses and construction of buildings, without first obtaining approval of such earth change from the appropriate soil conservation district or, if none, from the Bureau of Public Works. The Department of Natural Resources is directed to adopt criteria and procedures to be used by the counties and the local soil conservation districts to implement soil and shore erosion control programs and to otherwise assist the districts in carrying out the provisions of this act.

15. Coastal Wetlands Protection

date enacted: 1970; amended 1971, 1972, 1973; re-codified 1973

statute: A.C.M. Natural Resources 9-101 to 9-501

administered by: Secretary of the Department of Natural Resources, Board of Review (Department of Natural Resources)

summary: This act declares it to be the public policy of the state "to preserve and prevent the despoilation of wetlands." Private wetlands are defined as all lands bordering on or lying beneath tidal waters. State wetlands are defined as land under navigable waters of the state below the mean high tide line.

The Secretary is directed to delineate and map the landward boundaries of all private wetlands in the state. After notifying affected landowners and holding public hearings, the Secretary is authorized to adopt rules and regulations to govern the dredging, filling and altering of such wetlands. Once the rules have been adopted, no one may conduct a regulated activity until he applies for and obtains a permit from the Secretary. The Secretary may grant or deny the permit or grant the permit subject to certain limitations.

A license is required to dredge or fill state wetlands.

Anyone aggrieved by a decision of the Secretary may make an appeal to the Board of Review.

16. "Program Open Space"

date enacted: 1970; amended 1972, 1973; re-codified 1973; amended 1974

statute: A.C.M. Natural Resources 5-901 to 5-907

administered by: Department of State Planning, Department of Natural Resources, Board of Public Works

summary: Establishes a funding program for the purpose of enabling local governing bodies and state agencies to acquire land for outdoor recreation and open space use and to develop such land for the recreation of the public.

Local governing bodies must submit proposals for open space acquisition or development to the Department of Natural Resources for review and approval. The proposals must conform to the comprehensive plan of the municipality.

17. Regulation of Dredging - Charles County

date enacted: 1971

statute: Article 9, Code of Public Local Laws of Maryland, Section 337A (see 1971 Session Laws of Maryland, Chapter 792)

administered by: courts

summary: Makes it "unlawful to dredge for sand, gravel or other aggregates or minerals, in any of the tidal waters or marshlands of Charles County" with the exception of channel dredging operations for the purpose of navigation.

Violators are subject to fines of from $500 to $2,500.

18. "Maryland Environmental Policy Act"

date enacted: 1973; amended 1974

statute: A.C.M. Natural Resources 1-301 to 1-305

administered by: Secretary of the Department of Natural Resources

summary: Requires all state agencies to prepare an "environmental effects report" in conjunction with each state-proposed action significantly affecting the quality of the environment. The Secretary is directed to issue guidelines to assist the agencies in preparing such reports. Individuals and private corporations are encouraged to respond to the reports.

19. Maryland Agricultural Land Preservation Foundation

date enacted: 1974

statute: A.C.M. Agriculture 2-501 to 2-508

administered by: Maryland Agricultural Land Preservation Foundation Board of Trustees

summary: Creates Maryland Agricultural Land Preservation Foundation and provides for its powers, duties and funding. The Foundation may acquire, by gift, purchase, devise, bequest or grant, easements in gross or other rights to restrict the use of agricultural land and woodland to maintain the present character and use of the land.

Also includes an illustrative land preservation easement form to be adopted by the Trustees of the Foundation.

20. Designation of Critical Areas

date enacted: 1974

statute: A.C.M. 88C:1 to 2, 66B:3.05 (a)(7)

administered by: Secretary of State Planning (Department of State Planning), board of county commissioners or county council

summary: Requires the Secretary of State Planning to provide definitions of areas of critical concern. These are to include critical environmental areas, key facilities, and large-scale development.

Establishes a procedure whereby local governments and regional agencies may recommend to the Secretary areas within their jurisdiction to be designated as areas of critical concern. The Secretary must then submit the list to the Governor who, in turn, distributes it to the legislature. The Secretary is also required to submit recommendations for the regulation of critical areas to the Governor.

When anyone applies to a local government for any construction permit within an area of critical concern, the local officials are required to notify the Secretary of the proposal. The Secretary may intervene to the extent that he has a right of standing in any judicial or administrative process. He does not have a direct veto power over local decisions.

MASSACHUSETTS LAND-USE CONTROL LAWS

p. 64 blank

MASSACHUSETTS LAND-USE CONTROL LAWS[1]

1. "Improvement of Low Land and Swamps"

date enacted: 1702; numerous amendments

statute: A.L.M. 252:1 to 14C

administered by: State Reclamation Board, district commissioners

summary: Establishes a procedure whereby landowners may share the costs of draining jointly owned wetlands and provides for the formation of a three-member State Reclamation Board to administer the procedure.

To initiate drainage action, a majority of the owners of a wetland must submit a petition to the Board setting forth the necessity or desirability of the proposed "improvements."

Following a public hearing and the determination that the wetlands should be drained for the public health or for agricultural or industrial uses, the Board may order the formation of a "reclamation district" and appoint "district commissioners" to administer the district.

If the Board determines that the public health will be benefited by the drainage, then the Commonwealth is required to pay a portion of the expenses. Other costs are apportioned among the landowners according to the benefits received.

2. "Prohibition of Removal of Gravel, etc., from Beaches"

date enacted: 1884; amended 1892, 1931

statute: A.L.M. 91:30

administered by: Department of Public Works

summary: Authorizes the Department to issue a written notice to prohibit anyone from digging or removing stones, gravel, etc., from any beach, dune or island or from destroying vegetation growing on any of these areas, providing the Department determines that such activity is likely to be injurious to a harbor or other navigable tide waters.

Once notice has been issued, anyone violating the notice is subject to a fine of from $20 to $200.

3. "The Zoning Enabling Act"

date enacted: 1920; numerous amendments

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[1] Source: Annotated Laws of Massachusetts (The Lawyers Co-operative Publishing Co., Rochester, N.Y.). Cumulative supplements and advance sheets include laws passed through 1974.

statute: A.L.M. 40A:1 to 22

administered by: municipal legislative officials, board of appeals

summary: Authorizes municipal legislative officials to adopt, amend and enforce a zoning ordinance for the purpose of promoting the health, safety, morals or general welfare of the community. To enact a zoning ordinance, officials must follow certain procedures which, among other provisions, call for a public hearing. Once the ordinance has been adopted, legislative officials are required to appoint a board of appeals to hear appeals and, in special cases, to grant variances to the ordinance. Anyone aggrieved by a decision of the board of appeals may make an appeal to the District Court.

4. Forest Land Tax Law

date enacted: 1922; amended 1941, 1943, 1955, 1969, 1974

statute: A.L.M. 61:1 to 7

administered by: local tax assessor, State Forester (Department of Natural Resources)

summary: Owners of forest land which meets certain minimum qualifications - i.e., at least 10 acres and worth not more than $400 per acre (including land and timber) - may apply to the local assessor for special tax treatment. The State Forester must examine the forest land and determine if it qualifies under this act. If approved, the land and timber products thereon are taxed separately - the land is assessed at a value not to exceed $10 per acre; the forest products are not taxed until cut, when they become subject to a products tax based on the stumpage value of the timber.

Land withdrawn from the forest classification is subject to a withdrawal tax equal to the difference between the taxes paid and those which would have been paid had the land been assessed at its highest use value.

5. "The Subdivision Control Law"

date enacted: 1936; numerous amendments

statute: A.L.M. 41:81K to 81 GG

administered by: municipal planning board, board of appeals

summary: Enables municipalities to establish procedures and regulations governing the subdivision of land within their jurisdiction and authorizes the planning board to administer such controls. Municipalities adopting subdivision controls must appoint a board of appeals to hear grievances and in special cases to grant variances. The board is authorized to impose conditions as a prerequisite to the issuance of a variance.

6. "Forest Cutting Practices"

date enacted: 1943; amended 1952, 1957, 1970

statute: A.L.M. 132:40 to 46

administered by: State Forestry Committee, Director of the Division of Forestry (Department of Natural Resources), Commissioner of the Department of Natural Resources

summary: Establishes a State Forestry Committee which is charged with dividing the state into four regions and formulating regulations for each such region to govern forest cutting practices on private land. These regulations become law following public hearings and approval of the Commissioner.

Owners who propose to harvest forest products must give prior notice to the Director, who then prepares and makes available to the landowner a plan to guide the operation in accordance with the adopted regulations. In some cases a license is required for harvesting. Some exceptions to this act include: cutting for personal use, cutting products for sale but not exceeding 25,000 board feet and 50 cords on one parcel of land, and clearing land for cultivation.

7. Protection of Barrier Beaches

date enacted: 1950

statute: A.L.M. 91:30A

administered by: superior court

summary: Prohibits anyone from removing stones, gravel or other material from any natural barrier bordering on the sea which protects the adjacent upland against erosion.

The superior court has the jurisdiction to enforce this act. Violation of this act may result in a fine of up to $500.

8. Conservation Commission Law

date enacted: 1957; amended 1961, 1965, 1967, 1971

statute: A.L.M. 40:8C

administered by: municipal legislative officials, conservation commission

summary: Authorizes municipal legislative officials to appoint a three- to seven-member conservation commission. The duties of the commission include: (1) preparation of a conservation and outdoor recreation plan; (2) acquisition of fee simple and lesser interests in open space land and water areas within the community; (3) preparation and maintenance of an inventory of open space areas which are subject to conservation or preservation restrictions or easements, or to flood plain zoning; and (4) advising local

officials on matters relating to the conservation, preservation or development of natural resources. The power of eminent domain granted in this section may not be used to acquire farm or other agricultural land.

Conservation commissions are granted regulatory authority over the use of flood plains (see no. 9 below).

9. Protection of Wetlands, Flood Plains and Seacoasts

date enacted: 1967; amended 1968, 1971, 1972, 1973; repealed and re-enacted 1974 (This law supersedes two previous coastal wetland statutes, the Jones Act of 1963 and the Coastal Wetlands Act of 1965.)

statute: A.L.M. 131:40

administered by: conservation commission or, if none, the municipal legislative officials; Department of Natural Resources; Department of Public Works

summary: Prohibits anyone from filling, dredging or otherwise altering "any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow, or swamp" bordering on the ocean or inland waters without giving written notification of intent to the conservation commission (or, if none, to legislative officials), the Department of Natural Resources and the Department of Public Works. This act does not apply to work done for normal repairs or public services.

Following a public hearing, the conservation commission may impose regulations on the proposed activity so as to protect the environment. Such regulations may be appealed to the Department of Natural Resources, which may issue an order of its own superseding that of the commission.

A sign of specified dimensions must be posted adjacent to work being done subject to this act.

Violation of this act may result in fines of up to $1,000 and six months in jail.

10. Acquisition and Protection of Open Space

date enacted: 1967

statute: A.L.M. 34:25

administered by: county commissioner, conservation commission, Department of Natural Resources

summary: Authorizes county commissioners to acquire fee simple or lesser interests in real property in order to protect, conserve or maintain land in an open space condition. The acquisitions must be approved by the local conservation commission and the Department.

11. "Protection of Inland Wetlands"

date enacted: 1968; amended 1972, 1973, 1974

statute: A.L.M. 131:40A

administered by: Commissioner of the Department of Natural Resources, elected municipal officials

summary: Authorizes the Commissioner to adopt, amend or repeal orders regulating or prohibiting the alteration or pollution of "inland wetlands." Such orders shall include the establishment of lines along waterways or flood-prone areas beyond which no one may place an obstruction or encorachment without first obtaining authorization from the Commissioner. Before such orders may take effect, public hearings must be held and the orders must be approved by the appropriate local elected officials. Orders which are adopted must be recorded in the appropriate registry of deeds. "Inland wetlands" are defined as any marsh, meadow or swamp bordering any inland waters or that portion of the same subject to flooding by fresh water.

12. "Conservation and Preservation Restrictions"

date enacted: 1969; amended 1973

statute: A.L.M. 184:31 to 33

administerd by: court system

summary: Authorizes governmental bodies, charitable organizations and trusts to acquire interests in land to limit its use to scenic, natural or open space purposes (as in the case of conservation restrictions) or for architectural, archaeological or historic purposes (as in the case of preservation restrictions). Conservation and preservation restrictions are statements in property deeds which may be enforced by injunction.

The restrictions may be released from the deed, in whole or in part, only after public hearings and after local municipal officials determine that their continuance is not in the public interest.

13. "Anti-Snob Zoning Law"

date enacted: 1969

statute: A.L.M. 40B:20 to 23

administered by: Housing Appeals Committee (Department of Community Affairs), local zoning board of appeals

summary: Authorizes qualified public and nonprofit sponsors of low and moderate income housing to submit a single application to the local zoning board of appeals. Following a public hearing at which all other local boards are expected to appear, the board of appeals may issue a "comprehensive permit" including in one document all the necessary local approvals.

If the "comprehensive permit" is denied or if conditions are included in the permit which render the project uneconomic, then the applicant is authorized to appeal to the Housing Appeals Committee. The Committee has the authority to issue its own permit overriding the decision of the local board.

14. Actions to Prevent Damage to the Environment

date enacted: 1971; amended 1972; re-codified 1973

statute: A.L.M. 214:7A

administered by: county superior courts

summary: Any ten residents or any political subdivision of the Commonwealth may petition a superior court to issue an order to halt or prevent anyone from causing "damage to the environment" before final determination of the cause, providing such damage constitutes a violation of a statute, ordinance, by-law or regulation designed to protect the environment.

No action may be taken by the court unless the petitioners, at least 21 days prior to the commencement of the action, have given written notice of the violation or imminent violation to (1) the agency responsible for enforcing said statute, ordinance, etc.; (2) the attorney general; and (3) the person causing or about to cause such action. The court may waive the 21 days provision if the petitioners can demonstrate the irreparable "damage to the environment" will result unless immediate action is taken.

15. Protection of "Scenic and Recreational Rivers and Streams"

date enacted: 1971; amended 1973

statute: A.L.M. 21:17B

administered by: Commissioner of the Department of Natural Resources, Board of Natural Resources

summary: The Commissioner, with the Board's approval, may adopt, amend or repeal orders regulating or prohibiting the dredging, filling or altering of the "scenic and recreational rivers and streams" of the Commonwealth. With the adoption of any such order, the landowners must be notified and a copy of the order must be recorded with the registry of deeds.

This provision pertains to those rivers and streams which are designated by the Commissioner as "scenic and recreational" and includes the land extending up to 100 yards from either side of the natural bank.

16. Environmental Policy Act - State

date enacted: 1972; amended 1973, 1974

statute: A.L.M. 30:61

administered by: all state agencies, departments, boards, etc.; authorities of political subdivisions; Secretary of Environmental Affairs (Executive Office of Environmental Affairs)

summary: Requires all state agencies, departments, boards, etc., as well as any authorities of political subdivisions, to prepare an environmental impact report for all major proposals that will affect the environ-

ment. The report must conform to rules set forth by the Secretary and to the requirements of the National Environmental Policy Act. It must contain a detiled statement describing the nature and extent of the proposed work and the measures being taken to minimize environmental damage.

The 1974 amendment limits the scope of the report to the agency's own involvement in the project and sets time limits for the filing of objections to the proposed activity.

17. Current Use Taxation of Farm Land and Horticultural Land

date enacted: 1973

statute: A.L.M. 61A:1 to 24

administered by: local board of assessors, Commissioner of Corporations and Taxation (Department of Corporations and Taxation), Farmland Valuation Advisory Commission

summary: Upon application by the landowner and approval by the board of assessors, qualified land devoted to agricultural or horticultural use may be assessed for property tax purposes on the basis of its current use value rather than at its highest and best use value. The landowner must apply annually on forms prescribed by the Commissioner.

If land approved under this act is subsequently converted to uses other than agricultural or horticultural, additional taxes become due and payable by the owner according to the provisions of either a roll-back tax or a conveyance tax, whichever is greater. The roll-back tax is applied to the current year of taxation plus the four years immediately preceding in which the land was assessed according to this act. The conveyance tax is applied for a period of up to 10 years and is very similar to that of Connecticut's Conveyance Tax Law (see Connecticut no. 17).

A Farmland Valuation Advisory Commission is established and directed to annually determine a range of values for several classes of agricultural and horticultural land uses to assist local assessors in determining current use values.

18. Berkshire's Scenic Mountains Act

date enacted: 1974

statute: A.L.M. 131:39A

administered by: hearing authority (composed of the local conservation commission or, if none, the board of selectmen or the city mayor), Commissioner of the Department of Natural Resources

summary: Authorizes municipal subdivisions in Berkshire County to appoint a hearing authority to carry out the provisions of this act. The hearing authority is authorized to adopt reasonable regulations to protect and preserve the watershed resources and scenic qualities of the mountain regions within its jurisdiction. Mountain regions are generally those areas above the watershed base elevation as defined in the act (1500 feet or higher, depending on the watershed). Before the boundaries of a mountain region become law, the city council or the persons attending a town meeting must approve them by a two-thirds vote.

Prohibits anyone from filling, excavating or altering any land situated within a mountain region without first filing for and obtaining an "order of conditions" from the hearing authority. After holding a public hearing and complying with other requirements, the hearing authority shall issue an order which may impose conditions on the proposed activity so as to protect the environment.

If other interested parties feel the order will not adequately protect the environment, they may request the Department to step in. After receiving such a request and after following certain procedures the Department may issue an order, signed by the Commissioner, superseding the order of the hearing authority.

Violators are subject to fines of up to $1,000 or six months in jail. Each day of violation constitutes a separate offense.

NEW HAMPSHIRE LAND-USE CONTROL LAWS

NEW HAMPSHIRE LAND-USE CONTROL LAWS[1]

1. "Improvement of Swamp Lands"

date enacted: 1883; amended 1897

statute: RSA 431:1 to 5

administered by: town selectmen

summary: Authorizes selectmen, upon petition by the landowner, to drain or fill any low or swamp lands "when the public health or good, or the advancement of agriculture, requires it." Anyone who receives special benefit from such "improvements" may be required to share in the draining or filling expenses.

2. Tax Abatement for Forestation

date enacted: 1903; amended 1925

statute: RSA 221:9 to 11

administered by: local assessors

summary: Entitles the owner of land planted with not less than 700 softwood trees per acre and valued at less than $25 per acre to receive a partial tax rebate for a period of 30 years, providing his application is approved by the assessor.

3. Zoning and Historic Districts Laws

date enacted: 1925; numerous amendments

statute: RSA 31:60 to 89k

administered by: municipal legislative officials, board of adjustment, other municipal officials

summary: Authorizes municipal legislative officials to adopt, amend and enforce a zoning ordinance for the purpose of promoting the health, safety, morals or general welfare of the community. To adopt a zoning ordinance, municipal legislative officials must follow certain detailed procedures. Once an ordinance has been adopted, officials are required to appoint a board of adjustment to hear appeals and, in special cases, to grant vari-

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[1] Source: New Hampshire Revised Statutes Annotated (Equity Publishing Co., Orford, N.H.). Cumulative supplements and advance sheets include laws passed through April 11, 1974.

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ances to the ordinance. A public hearing must be held before a variance may be granted.

Amendments made in 1963, 1969 and 1973 enable municipalities to establish historic districts in order to preserve structures and places of historic and architectural value. When such a district has been formed, municipal officials are required to appoint a historic district commission. The commission has the power to accept, review and act upon all applications for building permits within the district. In this regard the commission must seek the advice of administrative officials such as those of the planning commission, fire district, and educational groups.

4. Subdivision Regulation

date enacted: 1935; numerous amendments

statute: RSA 36:19 to 29

administered by: planning board

summary: Authorizes municipalities to adopt an ordinance enabling municipal legislative officials to appoint a five- or seven-member planning board. Before the board may consider plat approval, it must first adopt regulations governing subdivisions. The regulations may require future development to conform with the zoning ordinance and the official map. They may also contain provisions for traffic, health and open space considerations. The board may require the subdivider to provide certain improvements as a condition of approval.

Appeals concerning subdivision regulations are made to the board of adjustment.

5. Forest Yield Tax

date enacted: 1949; numerous amendments

statute: RSA 79:1 to 27

administered by: local assessor, Commissioner of Revenue Administration (Department of Revenue Administration)

summary: Exempts all timber and wood grown for logging purposes from the general property tax and, in unincorporated places, from the school tax. This act does not affect the property taxation of land on which the timber is growing. When the landowner decides to harvest his crop, he must give notice of intention to the Commissioner and to the local assessor. After it has been cut, a yield tax becomes due on the stumpage value of the timber.

When an assessing official determines the town is being "unreasonably deprived" of revenue because of the failure of an owner to cut mature timber, that official may subject the standing timber to the general property tax in an effort to entice the owner to harvest his timber. An appeal board must be appointed to hear grievances arising as a result of these assessments.

6. Conservation Commission Act

date enacted: 1963; amended 1973

statute: RSA 36-A:1 to 6

administered by: municipal legislative officials, conservation commission

summary: Enables municipalities to establish a three- to seven-member conservation commission. The powers and duties of the commission include: (1) preparation of an index of all open space and natural, aesthetic or ecological areas within the community; (2) acquisition of fee simple or lesser interests in open space land and water areas; (3) management of municipal open space areas; and (4) advising local officials regarding the conservation, preservation or development of natural resources.

7. Protection of Inland and Tidal Wetlands

date enacted: 1967; amended 1969, 1970, 1973

statute: RSA 483-A:1 to 6

administered by: Water Resources Board (Department of Resources and Economic Development), town clerk

summary: Declares it to be for the public good and welfare of the state to protect and preserve wetlands from despoilation and unregulated alteration.

Prohibits anyone from excavating, removing, filling or dredging any bank, flat, marsh or swamp in and adjacent to any waters of the state without first applying for and obtaining a permit from the Board. The applicant must also file notice of his intent with the town clerk, who in turn notifies other municipal officials. Waters and adjacent areas include: (1) land under tidal waters and adjacent land which is less than $3\frac{1}{2}$ feet above mean high tide and which is characterized by certain specified indicator plants and (2) all fresh water streams, lakes, ponds, swamps and bogs and adjacent banks and shores.

Once notice has been given to abutting landowners and a public hearing has been held, the Board may issue or deny the permit or it may issue the permit and attach regulations. When a permit has been issued, it must be posted in a prominent place at the site of the approved project.

If the conservation commission so requests, the Board's decision may be delayed for 30 days in order to give the commission time to conduct a study and make a report on the proposal.

Violators of this act are subject to fines of up to $5,000. The money is to be spent restoring the damaged wetland.

8. Placing Fill in Public Waters

date enacted: 1967; amended 1970

statute: RSA 482:41-e to 41-i

administered by: Water Resources Board (Department of Resources and Economic Development), Governor, municipal legislative officials

summary: Prohibits anyone from placing fill below the mean high water level of any public waters or public-owned water bodies without first obtaining the written consent of municipal legislative officials and the Governor. Public waters are all natural ponds greater than 10 acres. Public-owned water bodies are ponds and lakes whose water level is maintained by a state-operated structure.

Petitions for permission to fill must be submitted to the Board. Following a public hearing, the board makes recommendations to the Governor and the local legislative officials to either approve or deny the request. The Board may issue regulations to limit an approved filling operation.

Fill placed in violation of this act may be ordered removed at the violator's expense.

9. State Regulation of Subdivisions and Sewage Disposal

date enacted: 1967; amended 1969, 1971, 1972, 1973

statute: RSA 149-E:1 to 8

administered by: Water Supply and Pollution Control Commission (13 members, appointed by Governor)

summary: Establishes a number of regulations to govern the subdivision of land and the construction of sewer and waste disposal systems. The purpose of the act is to protect water supplies and to prevent pollution in the surface waters of the state. A subdivision is defined as the division of a tract of land into 2 or more lots, each requiring a sewage disposal system.

Briefly, the provisions of this act include the following:

1) Anyone proposing to subdivide land or to construct a sewage or waste disposal system must submit two copies of the plans and specifications of each proposal to the Commission. A soils map must also be included. The Commission must approve or disapprove the subdivision plans within 30 days and the sewage or waste disposal plans within 15 days.
2) Authorizes the Commission to establish regulations to govern the subdivision of land and the construction of sewage and waste disposal systems.
3) Subdivision lot sizes must be in accordance with the soil's ability to absorb wastes without polluting water supplies or adjoining water.
4) Prohibits anyone from constructing roads, clearing land, depositing fill or otherwise altering the natural state of the land for subdivision purposes until such subdivision plans have been submitted to and approved by the Commission.
5) Prohibits anyone from constructing any building from which sewage or other wastes will be discharged without prior approval of the sewage or waste disposal plans and specifications by the Commission. Structures which will connect to a public sewer system are exempt from this provision.

Anyone aggrieved by a decision of the Commission may submit a

"motion for reconsideration" to the Commission. Within 10 days the Commission must either affirm, modify, revise or reverse its original decision. The motion for reconsideration may be appealed to the superior court.

10. "Cutting of Timber Near Public Waters and Highways"

date enacted: 1971; amended 1973

statute: RSA 224:44-a

administered by: Director of the Division of Resources Development (Department of Resources and Economic Development)

summary: On land managed for forestry purposes, at least fifty percent of the basal area of trees must be left uncut and well distributed "within one hundred and fifty feet of any great pond, navigable river, or public highway or within fifty feet of any other stream, river or brook, which normally flows throughout the year," unless the landowner obtains prior written consent from the Director.

11. "Current Use Taxation"

date enacted: 1973; amended 1974

statute: RSA 79-A:1 to 26

administered by: local assessing officials, selectmen, Current Use Advisory Board (Department of Revenue Administration), planning board

summary: Declares it to be "in the public interest . . . to prevent the conversion of open space to more intensive use by the pressure of property taxation at values incompatible with open space usage." Establishes two separate devices to achieve this objective: (1) current use value assessment and (2) acquisition of discretionary easements of development rights. Open space land includes farm land, flood plains, wetlands, recreation land, forest land and wild land.

Upon application by the landowner and approval by the assessor or, if none, the selectmen, qualified open space land is assessed at its current use value. Current use values for several classes of open space land are annually determined and made available to assessing officials by the Current Use Advisory Board.

Land approved under this act which is subsequently converted to uses inconsistent with the open space definition is subject to a "land use change tax." This is a tax on the assessed full value of the land and is in addition to the annual real estate tax.

Discretionary easements are agreements between the landowner and the municipality in which the former agrees to use his land for open space purposes only. Landowners must apply to the planning board or, if none, to the selectmen for a permit to convey such easements. If approved, the land is assessed at its current use value for the term of agreement, which must be at least ten years. The landowner may be released from the easement agreement in cases of extreme personal hardship by applying to the selectmen. Upon such release, additional taxes are due according to the following rates:

(a) 12 percent of the assessed full value of the property, if released during the first half of the term of the easement; (b) 6 percent if released during the second half of the term.

12. "Interim Zoning Ordinance"

date enacted: 1973

statute: RSA 31:103 and 36-C:1 to 5

administered by: local planning board, selectmen

summary: Authorizes municipalities that have no zoning regulations to adopt an "emergency temporary zoning and planning ordinance," according to procedures set forth in this act, to guide development until they adopt their own zoning ordinance or until two annual town meetings have been held. The purpose of a temporary ordinance is to guide development until the town adopts its own standard zoning ordinance (see no. 3 above). The selectmen may act as the zoning board of adjustment until one is appointed.

13. Oil Refinery Site Location - Local Approval Required

date enacted: 1974

statute: RSA 31:109, 47:27

administered by: voters in towns, voters and governing bodies in cities

summary: Prohibits the building of an oil refinery in any town until it has been approved by a majority of the voters at a town meeting. The vote must be by written ballot.

In cities an oil refinery cannot be built until approved by two-thirds of the entire governing body, or the governing body may opt to place the question on the ballot. If petitioned by 10 percent of the registered voters, a ballot vote is required. A majority vote for or against decides the fate of the refinery proposal.

NEW JERSEY LAND-USE CONTROL LAWS

NEW JERSEY LAND-USE CONTROL LAWS[1]

1. Draining Wetlands

date enacted: 1881; amended 1945, 1953

statute: N.J.S.A. 40:30-1 to 30-21

administered by: county superior court; drainage commission (composed of civil engineer and committee of three freeholders, both appointed by the superior court judge)

summary: Any wetland that is determined to be in a condition detrimental to the public health may be ordered by the superior court judge to be drained, providing the court has been petitioned to take such action by at least 100 freeholders of the county. The judge may appoint a civil engineer and a committee of three freeholders to oversee and carry out the operation.

2. Elimination or Alteration of Natural Brooks

date enacted: 1925

statute: N.J.S.A. 40:69-1

administered by: municipal legislative officials

summary: Grants municipal governmental bodies the authority to "cover over" or "change the alignment of" any natural stream or watercourse within its boundaries.

3. Zoning Enabling Legislation

date enacted: 1928; numerous amendments

statute: N.J.S.A. 40:55-30 to 55-51

administered by: municipal legislative officials, board of adjustment

summary: Authorizes municipal legislative officials to adopt, amend and enforce a zoning ordinance for the purpose of promoting the health, safety, morals or general welfare of the community. To enact a zoning

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[1] Source: New Jersey Statutes Annotated (West Publishing Co., St. Paul, Minn.). Cumulative annual pocket parts and advance sheets include laws passed through November 2, 1974.

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ordinance, officials must follow certain detailed procedures. Once the ordinance has been adopted, the legislative officials are required to appoint a board of adjustment to hear appeals and, in special cases, to grant variances to the ordinance.

4. Subdivision Regulation - Municipal

date enacted: 1930; numerous amendments

statute: N.J.S.A. 40:55-1.14 to 55-1.29

administered by: municipal planning board, municipal legislative officials

summary: Authorizes municipal legislative officials to empower a planning commission to adopt, amend and enforce a subdivision ordinance according to specific procedures. Once an ordinance has been adopted, the commission must approve all plats. In granting approval to the subdivider the commission may require that certain improvements be made to the land, such as streets, sewerage lines and sidewalks.

Grievances arising from subdivision regulations are taken to the court of common pleas.

Subdivisions which may affect county roads, etc., require the approval of the county planning board (see no. 10 below).

5. Soil Conservation Districts - Land-Use Regulation

date enacted: 1937; amended 1953, 1957, 1959, 1960, 1966

statute: N.J.S.A. 4:24-1 to 24-38

administered by: soil conservation district supervisors, board of adjustment, State Department of Agriculture

summary: Provides for the creation of soil conservation districts according to specific procedures which include majority approval by the landowners of the proposed district. When a district has been approved, three supervisors are appointed and authorized to formulate regulations in order to protect the soil and water resources within the district. The regulations may be nullified if objections are raised by persons owning at least 25 percent of the total land acreage in the district. Any landowner aggrieved by the regulations may appeal to an appointed board of adjustment for a variance.

Persons not in compliance with regulations may be subject to court action.

6. "Delaware River Basin Compact" - Flood Plain Zoning

date enacted: 1961

statute: N.J.S.A. 32:11D-34 to 11D-37

administered by: Delaware River Basin Commission (signatories: New Jersey, New York, Delaware, Pennsylvania and the U.S.A.)

summary: Authorizes the Commission to study and determine the nature and extent of the flood plains of the Delaware River and its tributaries and, on the basis of such studies, to classify land and establish standards for flood plain use, pollution control and domestic, municipal and agricultural water supply development. Prior to the adoption of such regulations, the Commission must hold public hearings.

7. "Farmland Assessment Act of 1964"

date enacted: 1964; amended 1968, 1970, 1972, 1973

statute: N.J.S.A. 54:4-23.1 to 4-23.32

administered by: local assessor, Director of the Division of Taxation, State Farmland Evaluation Advisory Committee

summary: Upon application by the landowner and approval by the assessor, qualified land devoted to agricultural or horticultural use may be assessed for general property tax purposes on the basis of its current use value rather than at its highest and best use value. The landowner must apply on forms prescribed by the Director of the Division of Taxation.

If land approved under this act is subsequently converted to uses other than agricultural or horticultural, a 2-year roll-back clause takes effect and the landowner is subject to additional taxes. The roll-back tax applies to the year in which the change takes place plus the two previous years in which the land was assessed at its current use value.

The State Farmland Evaluation Advisory Committee, created by this act, is directed to prepare and publish annually a range of values for several classes of agricultural and horticultural land uses to assist local assessors in determining current use values.

8. Regulation of Planned Unit Developments

date enacted: 1967

statute: N.J.S.A. 40:55-54 to 55-67

administered by: municipal legislative officials

summary: Grants municipalities the authority to supervise application procedures and grant final approval to planned unit developments, providing the municipality first adopts, by vote of its legislative body, an ordinance which includes regulations and procedures which are consistent with this act.

The act enumerates certain criteria for planned unit developments which must be followed by the municipality.

9. "Hackenscak Meadowlands Reclamation and Development Act"

date enacted: 1967; amended 1970, 1972

statute: N.J.S.A. 13:17-1 to 17-86

administered by: Hackensack Meadowlands Development Commission, Hackensack Meadowlands Municipal Committee

summary: Charges the Hackensack Meadowlands Development Commission with preparing and adopting a master plan for approximately 21,000 acres of wetland in the Hackensack Meadowlands District and grants the Commission broad powers to implement the plan by establishing regulations and by requiring development permits. The District encompasses 14 municipalities in 2 counties.

Prior to the Commission's approval of the master plan or its adoption of regulations, a public hearing must be held and the proposed plan or regulations must be submitted to review by the Hackensack Meadowlands Municipal Committee.

10. Subdivision Regulation - County

date enacted: 1968; amended 1969

statute: N.J.S.A. 40:27-6.1 to 27-6.13

administered by: county planning board, county board of chosen freeholders

summary: Requires all subdivision proposals to be submitted to the county planning board for review. If the subdivision will affect county roads or drainage facilities, the proposal requires the county board's approval. Such review or approval must be in "accordance with procedures and engineering and planning standards adopted by resolution of the board of chosen freeholders."

Anyone aggrieved by the county planning board's decision may appeal to the board of chosen freeholders.

11. Environmental Commissions

date enacted: 1968; amended 1972

statute: N.J.S.A. 40:56A-1 to 56A-7

administered by: municipal legislative officials, environmental commission

summary: Authorizes municipalities to adopt an ordinance enabling municipal legislative officials to appoint a three- to seven-member environmental commission.

The duties of the commission include: (1) preparing an index of all publicly or privately owned open areas, (2) advising local officials on matters relating to the conservation or development of such open areas, and (3) acquisition of open space by easements or other devices, providing the approval of legislative officials has been granted.

12. "The Wetlands Act of 1970" - Coastal Wetlands Protection

date enacted: 1970

statute: N.J.S.A. 13:9A-1 tp 9A-10

administered by: Commissioner of Environmental Protection (Department of Environmental Protection)

summary: Prohibits anyone from draining, filling, dredging or conducting any other "regulated activity" on any coastal wetland without first obtaining a permit from the Commissioner of Environmental Protection. The Commissioner may grant, deny or limit the permit. Coastal wetlands are defined as any bank, marsh, etc., below an elevation of one foot above local extreme high tide, upon which certain indicator plants are found.

The Commissioner is required to identify and map all coastal wetlands (except those within the Hackensack Development District), to put these on file in the office of the county clerk or register of deeds, and to notify all affected landowners. After completing the above, the Commissioner may adopt, amend or repeal regulations to restrict wetland use. A public hearing must be held on proposed regulations.

13. Flood Hazard Area Protection

date enacted: 1970; amended 1972

statute: N.J.S.A. 58:16A-50 to 16A-66

administered by: Division of Water Resources, Department of Environmental Protection, local municipalities

summary: Directs the Division of Water Resources to identify flood hazard areas in the state and authorizes the Department of Environmental Protection to adopt regulations and standards to guide municipalities in controlling land use and development on flood plains. A flood plain is defined as "the flat area adjoining the channel of a natural stream." Local municipalities must adjust their zoning and other ordinances to at least conform to the standards promulgated by the Department. If the municipalities fail to adopt or enforce these rules, the Department may step in and impose regulations to restrict land uses on the flood plain.

Local assessors are required to consider the restrictions placed on the use of flood plain land when determining the land's taxable value.

Persons violating this act may be subject to fines, court action, or both.

Coastal wetlands covered by the Wetlands Act of 1970 are exempt from this provision (see no. 12 above).

14. "New Jersey Green Acres Land Acquisition Act of 1971"

date enacted: 1971

statute: N.J.S.A. 13:8A-19 to 8A-34

administered by: Commissioner of Environmental Protection (Department of Environmental Protection), state agencies, local governments

summary: Authorizes the Commissioner to use the sum appropriated

by this act from the sale of bonds ($80 million) to assist state agencies and local governments to acquire land for conservation and recreation purposes.

15. "Coastal Area Facility Review Act"

date enacted: 1973

statute: N.J.S.A. 13:19-1 to 19-21

administered by: Commissioner of Environmental Protection (Department of Environmental Protection), Coastal Area Review Board

summary: Prohibits anyone from constructing restricted industrial or manufacturing facilities or large-scale multi-family developments (a list of restricted facilities is included in the act) within an area defined as the "coastal area" without first obtaining a permit from the Commissioner. An environmental impact statement must accompany the permit application. Following a public hearing, the Commissioner may approve, deny or limit the permit request. Anyone aggrieved by the decision may make an appeal to the Coastal Area Review Board, which has the power to sustain or reverse the Commissioner's decision.

This act is regarded as supplemental to the Wetlands Protection Act of 1970 (see no. 12 above).

NEW YORK LAND-USE CONTROL LAWS

NEW YORK LAND-USE CONTROL LAWS[1]

1. Protection of Navigable Waters

date enacted: 1909; amended 1965

statute: Navigation Law 31

administered by: Department of Environmental Conservation

summary: Prohibits anyone from excavating or placing fill in the navigable waters of the state without first applying for and obtaining a permit from the Department. The applicant must follow the procedures described in ECL 15-0505 (see no. 3 below).

2. Drainage of Wetland

date enacted: 1911; numerous amendments

statute: ECL 15-1901 to 15-1983

administered by: Department of Environmental Conservation, drainage improvement district executive committee

summary: Authorizes the Department to establish and provide for the maintenance of drainage improvement districts for the purpose of draining jointly owned wetland for agricultural uses. To establish a "drainage improvement district," 3 or more owners of a wetland must submit a petition to the Department stating their reasons for proposing the district and the benefits to be derived from its formation, or, if the Department finds that the public health, safety or welfare will be benefited from such drainage, then it may order the formation of the district.

Once a district has been formed, an executive committee is elected to carry out administrative functions and to supervise the construction, maintenance and financing of any drainage-related projects within the district. Landowners are taxed according to benefits received from the "improvements."

Any owner (the owner does not have to be a member of a drainage improvement district) of a swamp, bog, pond or other wetland may petition the Department to condemn a right-of-way across another person's property for the purpose of laying a ditch to drain said wetland. Following an investigation of the proposal and a public hearing, the Department may issue an order condemning the land and ordering the petitioner to pay for the taking.

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[1] Source: McKinney's Consolidated Laws of New York Annotated (West Publishing Co., St. Paul, Minn.). Cumulative annual pocket parts include laws passed through May 30, 1974.

p. 92 blank

3. Protection of Watercourses and Wetlands

date enacted: 1911; amended 1965, 1972, 1973

statute: ECL 15-0501 to 15-0515

administered by: Commissioner of Environmental Conservation (Department of Environmental Conservation)

summary: Prohibits anyone from: (a) altering or disturbing the course of any stream, (b) impounding or obstructing any stream or watercourse, or (c) excavating or filling in the navigable waters of the state or adjacent swamps, estuaries and wetlands, without first applying for and receiving a permit from the Department. A description of the proposal must accompany the application. If the Department determines that the proposed action will not harm the public health, safety or welfare, then it may issue the permit.

The Commissioner is authorized to issue an order to stop any person who is violating this act and to require that person to return the wetland or watercourse to its previous state, or the commissioner can order the damage repaired and assess costs to the person causing the violation.

4. Building Zones - Village Planning and Zoning Law

date enacted: 1923; numerous amendments

statute: Village Law 7-700 to 7-742

administered by: board of trustees, planning board, board of appeals

summary: Authorizes the board of trustees of any village to adopt, amend or repeal a zoning ordinance in order to promote the health, safety, morals or general welfare of the community. To enact a zoning ordinance the board of trustees must follow certain detailed procedures. Once the ordinance has been adopted, the trustees are required to appoint a board of appeals to hear grievances and, in special cases, to grant variances to the ordinance.

The board of trustees is also authorized to appoint a five-member planning board whose duties include the preparation of a master plan and an official map for the community. The board of trustees, by resolution, may empower the planning board to review and approve or reject subdivision proposals and to adopt regulations to control the plotting and subdividing of land. Once such a resolution has been adopted, no subdivision may be recorded with the office of the county clerk until it has been approved by the planning board.

5. Regional and County Planning

date enacted: 1925; numerous amendments

statute: General Municipal Law 239-b to 239-n

administered by: county board of supervisors, county or regional planning board

summary: Authorizes the board of supervisors of any county, alone or in collaboration with the governing bodies of cities, towns and villages or any adjacent county, to establish a county or regional planning board. Such a planning board is empowered to adopt subdivision regulations and to enforce such regulations in unincorporated areas and other areas within the county or region which are not otherwise governed by subdivision controls. The municipal legislative officials of any city, town or village may vote to have the county or regional planning board regulate subdivisions within their community, providing the municipality has its own planning board and is located within the county or region.

A provision added in 1958 and amended in 1969 expanded the regulatory powers of county officials. This provision authorizes the county board of supervisors to prepare and adopt an official map showing: existing and proposed rights-of-way for county roads; drainage systems; and existing and proposed county, state or federal projects, e.g., parks or development facilities. Once the map has been adopted, municipalities within the county are prohibited from issuing building permits for structures which have frontage on, have access to or are otherwise directly related to any existing or proposed right-of-way or site shown on the map, without first obtaining the county planning board's approval. The board may require the developer to conform to certain specifications or regulations, or it may prohibit the development.

The powers of county and regional planning boards were expanded by a provision added in 1967 and amended in 1968 and 1969. It prohibits local planning boards from:

a) changing the district classification or other zoning regulation on property within 500 feet of the boundary of any city, town or village or any state or county property, e.g., parks, highways, drainage systems, etc., or

b) granting any special permit or zoning variance on real property within 500 feet of the above, without first notifying and receiving recommendations from the county or regional planning board. The local planning board may not act contrary to the recommendations issued except by a vote of a majority plus one of all its members.

6. Town Zoning and Planning Law

date enacted: 1926; numerous amendments

statute: Town Law 260 to 284

administered by: town board, planning board, board of appeals

summary: The provisions of this law are similar to those described for the village "building zones" law (see no. 4 above), except that the principal administrative authority is the town board rather than the board of trustees. These laws are not identical, however, and the statutes should be consulted in order to identify subtle differences between the two.

7. Acquisition of Open Space Areas - County, Municipal

date enacted: 1960; amended 1963, 1969, 1972

statute: General Municipal Law 247

administered by: counties, municipalities

summary: Declares the acquisition of open space to be a public purpose. Authorizes any county, city, town or village, following a public hearing, to acquire open space areas by fee simple and other devices including development rights, easement and covenant, providing the arrangement is agreeable to the landowner. This act allows a maximum of flexibility between parties.

Any device which imposes limits on the future use of private land must be considered by the assessor when determining the valuation of such land for real estate tax purposes.

8. "Delaware River Basin Compact" - Flood Plain Zoning

date enacted: 1961

statute: ECL 21-0701 to 21-0723

administered by: Delaware River Basin Commission (signatories: New York, Pennsylvania, New Jersey, Delaware and U.S.A.)

summary: Authorizes the Commission to study and determine the nature and extent of the flood plains of the Delaware River and its tributaries and, on the basis of such studies, to classify land and establish standards for flood plain use, pollution control and municipal, agricultural and industrial water supply development. Prior to the adoption of such regulations, the Commission must hold public hearings.

9. Lake George Park - Ordinances to Restrict Land Use

date enacted: 1964; amended 1966, 1968, 1972

statute: General Municipal Law 280 to 284[2]

administered by: village or town board

summary: Enables municipalities lying wholly or partially within the Lake George Park to adopt strict ordinances or zoning regulations to limit development to one- or two-family residences or one- or two-family residences and nonprofit recreation, providing a petition, signed by at least 20 persons owning at least two-thirds of the assessed valuation of real property in the proposed area, has been submitted to the town board. These limitations do not apply to non-conforming uses in existence before the adoption of the ordinance.

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[2] Also note ECL 43-0101 to 43-0121 (enacted 1972) establishing the Lake George Park Commission. The Commission is authorized to acquire restrictive easements in order to effectuate land-use control in the Park area.

10. "Susquehanna River Basin Compact" - Flood Plain Regulation

date enacted: 1967

statute: ECL 21-1301 to 21-1321

administered by: Susquehanna River Basin Commission (signatories: Pennsylvania, Maryland, New York and U.S.A.)

summary: Authorizes the Commission to "study and determine the nature and extent of the flood plains of the Susquehanna River and its tributaries" and, on the basis of such studies, to classify and establish standards and regulations for flood plain use and water quality control. The Commission is required to hold public hearings and to obtain the consent of the signatories before carrying out such regulations.

11. Tax Exemption for Agricultural and Horticultural Structures

date enacted: 1968

statute: Real Property Tax Law 483

administered by: local assessor

summary: Exempts structures and buildings necessary for agricultural or horticultural operations from property taxes on value increase due to construction or reconstruction for up to five years. The landowner's application must be approved by the local assessor. Upon approval, the assessor must determine the value of the structures, which will remain fixed for the five years.

In order to qualify for this exemption, the land involved must have been devoted to agricultural or horticultural use for two consecutive years prior to the date of application. This law applies only to structures which are newly built or reconstructed during the period from January 1, 1969 to January 1, 1979.

If structures exempt under this act are subsequently used for purposes other than agricultural or horticultural, a roll-back tax takes effect. The landowner must pay roll-back taxes for each of the years in which the structures were exempt.

12. Conservation Advisory Councils and Conservation Boards

date enacted: 1970; amended 1971, 1972

statute: General Municipal Law 239x, 239y

administered by: municipal legislative body, conservation advisory council

summary: Authorizes the legislative body of any city, town or village to appoint a three- to nine-member conservation advisory council to advise in the development, management and protection of its natural resources.

The local legislative body is also authorized to redesignate its conservation advisory council as a conservation board, provided the council submits a municipal open space index and has this approved by the legislative body. The board is responsible for reviewing proposals to develop open areas that have been identified in the index and to make recommendations to local officials regarding such proposals.

The role of the council or board with respect to land use is advisory only.

13. Agricultural Districts Law

date enacted: 1971; amended 1972, 1973, 1974

statute: Agriculture and Markets Law 300 to 307

administered by: county legislative body, Commissioner of Environmental Conservation (Department of Environmental Conservation); the following have advisory roles only: county planning board, county agricultural advisory committee, State Agricultural Resources Commission, State Office of Planning

summary:[3] Enables farmers to form agricultural districts to protect themselves from some of the rising costs and governmental actions usually associated with urbanization and to discourage urban development within good farming areas.

The formation of an agricultural district is a somewhat complicated process which calls for review and approval by both local and state agencies. Following is a summary of the principal steps involved in the process:

1) A district proposal is prepared by one or more landowners and submitted to the county legislative body. A minimum of 500 acres is required.

2) The county legislature refers the proposal to the agricultural advisory committee and the planning board for their recommendations.

3) Based upon such recommendations, the legislative body may modify the district proposal.

4) Following a public hearing, the county legislature may adopt the proposal as a plan.

5) The adopted plan is submitted to the Commissioner.

6) After receiving reports on the plan from the State Office of Planning Services and the State Agricultural Resources Commission, the Commissioner may certify the plan or a modification of it as eligible for a district.

7) If changes in the plan were made, then the legislature must hold another public hearing, after which the legislature may take action to approve or disapprove the district.

Once an agricultural district has been created, a number of provisions become effective. For an approved agricultural district, the statute:

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[3] This summary was adapted from W. R. Bryant and H. E. Conklin, Legislation to Permit Agricultural Districts in New York, as Amended through 1974, A. E. Ext. 74-17, Department of Agricultural Economics, Cornell University, Ithaca, N.Y., August 1974.

1) allows current use value assessment for farm land, providing the farmer submits an annual application (a five-year roll-back clause takes effect if the land is converted to non-farm uses);

2) prohibits local government officials from enacting ordinances that would excessively restrict or regulate farm structures and practices;

3) requires that state agencies modify their administrative regulations and procedures to encourage agriculture;

4) requires public agencies to give serious consideration to alternative areas before good farm land can be taken by eminent domain;

5) modifies the right of public agencies to advance funds for sewer, water and other facilities that would encourage non-farm development; and

6) limits the powers of special districts - e.g., water, sewer and lighting districts - to impose benefit assessments on farm land.

Another provision of this act enables farmers who are not in a district to receive current use value assessment providing the farmer commits his land (in writing) to farming for a period of 8 years. Severe tax penalties are imposed if the land is converted to non-farm uses while the commitment is still in effect.

14. Adirondack Park Agency

date enacted: 1971: amended 1973, 1974

statute: Executive 800 to 819

administered by: Adirondack Park Agency (Executive Department)

summary: Establishes the Adirondack Park Agency as an independent body within the Executive Department. The Agency is comprised of the heads of several state departments and other governor-appointed persons who are residents within the park. The Agency has general powers over the use of public and private land within the park. Of the six million acres of park land, about 60 percent is in private hands.

In 1972 a management plan, produced by the Agency for all state-owned land within the park, was approved by the legislature and the Governor. In 1973 the agency produced a "Land-Use Development Plan" covering all privately owned land within the park. This was also approved. The Development Plan divides all privately owned land into six types of land-use areas: hamlets, moderate intensity use, low intensity use, rural use, resource management and industrial use. Local zoning ordinances must conform to intensity of development restrictions and other regulations which accompany each type. Other provisions restrict development along the shorelines of lakes, ponds, streams and rivers.

15. "Wild, Scenic and Recreational System" - Rivers and Streams

date enacted: 1972; amended 1973

statute: ECL 15-2701 to 15-2723

administered by: Commissioner of Environmental Conservation (Department of Environmental Conservation), Adirondack Park Agency (APA), Governor

summary: Establishes a state system to preserve certain selected free-flowing rivers and their surroundings in their natural condition. The system is administered by the Commissioner, except within the boundaries of the Adirondack Park, where it is managed by the APA (see no. 14 above).

Designates portions of 17 rivers to be included in the system and provides a mechanism for future additions. Recommended additions are made through the Commissioner or the APA and must be approved by the Governor.

Following a public hearing, the Commissioner or the APA must adopt and enforce land-use regulations to protect and manage wild scenic and recreational rivers. The state is authorized to condemn conflicting land uses and to compensate the landowner for such taking. Land uses existing at the time of classification may continue.

16. Environmental Management Councils

date enacted: 1972; amended 1973

statute: ECL 47-0101 to 47-0115

administered by: county legislative body, county or regional environmental management council

summary: Authorizes county governing officials to establish environmental management councils with responsibilities which include: (1) advising on matters relating to the conservation and preservation of natural resources within the county, (2) maintaining an inventory of all open space land in the county, (3) cooperating with the county planning agency and other agencies in preparing plans for the protection of the environment.

The council is to consist of one member from each city, town and village conservation advisory council within the county (see no. 12 above). The act also authorizes two or more counties to establish a regional environmental management council.

The role of these county or regional councils with respect to land use is advisory only.

17. "Environmental Quality Bond Act of 1972"

date enacted: 1972; amended 1973

statute: ECL 51-0101 to 51-1105

administered by: Commissioner of Environmental Conservation (Department of Environmental Conservation), county or municipal legislative officials, other local officials, State Comptroller, Attorney General

summary: Directs that money received from the sale of bonds authorized by this act be expended for "preserving, enhancing, restoring and improving" the quality of water ($650,000,000), air ($150,000,000) and land ($350,000,000).

A county or municipality, upon the recommendation of its governing body, may apply to the Commissioner for state assistance for an eligible project. After reviewing the application, the Commissioner may approve,

disapprove or recommend modifications to the proposal. Upon approval, the county or municipality enters into a contract with the state in which the latter agrees to grant the money and the former agrees to carry out, operate and maintain the project. These contracts are subject to the approval of the State Comptroller and the Attorney General.

Money received for land preservation and improvements may be expended for any of the following projects: (1) forest preserves, (2) wetlands preservation and restoration, (3) unique area preservation, (4) stream rights acquisition, and (5) public access to state land.

18. "Tidal Wetlands Act"

date enacted: 1973

statute: ECL 25-0101 to 25-0602

administered by: Commissioner of Environmental Conservation (Department of Environmental Conservation), local government officials

summary: Declares it to be public policy to preserve and protect tidal wetlands from despoilation and destruction. Tidal wetlands are defined as areas which border on or lie beneath tidal waters, such as bogs, salt marshes, swamps, etc., and on which grow certain indicator plants.

Directs the Commissioner to make a tentative inventory of all the tidal wetlands in the state and, following the notification of affected landowners and a public hearing, to issue an order delineating the final boundaries of the wetlands. When the wetlands have been defined, the Commissioner may enter into cooperative agreements with local government officials to provide for the preservation and management of tidal wetlands in their natural state. In addition, the Commissioner must adopt regulations to control the use of tidal wetlands. Variances to these regulations may not be issued by local officials. These wetland restrictions must be considered by local assessors when determining the taxable property value.

Prohibits anyone from dredging, draining, filling or otherwise conducting any other regulated activity on these wetlands without first applying for and obtaining a permit from the Commissioner. Permit applications must be accompanied by a detailed description of the proposal. The Commissioner may issue, deny or limit the permit following a public hearing.

Any person convicted of violating any provision of this act is guilty of a misdemeanor and may be fined from $500 to $1,000 for the first violation and from $1,000 to $2,000 for each subsequent violation. He is also liable for the full cost of restoring the area to its prior condition.

19. "New York State Mined Land Reclamation Law"

date enacted: 1974 (effective April 1, 1975)

statute: ECL 23-2701 to 23-2727, McKinney's CLNY

administered by: Department of Environmental Conservation, Commissioner of Environmental Conservation

summary: Prohibits anyone planning to mine more than 1,000 tons of minerals within 12 successive calendar months from engaging in such a mining operation without first applying for and obtaining a permit from the Department. The applicant must submit to the Department along with his application: (1) an estimate of the surface area of land to be disturbed, (2) maps of the area, (3) a detailed mined land-use plan, (4) a detailed reclamation plan which must include a description of the future use of the land after mining and reclamation, (5) a reclamation bond (amount to be determined by the Department), and other information. Landowners adjacent to the proposed mining site and appropriate local government officials must be given notice of the proposal.

When all requirements have been met, the Department must issue the permit, however, the Commissioner may attach additional conditions to it. The permit may be revoked by the Department for violations of this act or of the permit agreement.

20. Taxation of Forest Lands

date enacted: 1974

statute: Real Property Tax Law 480a

administered by: Department of Environmental Conservation, State Board of Equalization and Assessment (Executive Department)

summary: The purpose of this act is to provide a means to protect and enhance forest lands as a viable segment of the state's economy by assessing forest land according to its current use value.

Upon application by the landowner and approval by the Department, eligible tracts of forest land (at least 25 acres) are assessed for property tax purposes according to their current forest land use value rather than at their highest and best value. The landowner must submit a statement with his application agreeing to use the land for forest crop production for at least 8 years. Upon approval of a tract, the Department must notify the county clerk.

The value of forest land per acre is determined annually by the State Board of Equalization and Assessment and must be made available to local assessors. The Board is required to use U.S.D.A. forest crop production figures in determining the value.

Within 30 days after the landowner cuts the timber, he must pay a 6 percent tax on the stumpage receipts to the town supervisor. The owner may cut 5 cords of wood for his personal use tax-free.

If land certified as forest land is subsequently converted to uses which preclude its management for forest crop production, a 5-year roll-back clause takes effect.

When any certified tract contains on the average 15,000 board feet of timber per acre, the Department may direct the landowner to harvest the crop. If the landowner fails to comply with the order within a period of 2 years, the tract is considered to have been converted to an inconsistent use and roll-back taxes are imposed for the preceding 5 years.

21. National Flood Insurance Program - Local Participation

date enacted: 1974

statute: ECL 36-0101 to 36-0115

administered by: Commissioner of Environmental Conservation
(Department of Environmental Conservation [DEC])

summary: Establishes a state-wide flood plain management program to insure that flood-prone communities adopt programs which will qualify them for the national flood insurance program. The national program requires the adoption of adequate land-use control and enforcement measures.

When a local government is notified by the Secretary of the U.S. Department of Housing and Urban Development that it has been designated as a flood-prone community, it must notify the Commissioner of such designation within ten days. The DEC is required to assist the community in the preparation of adequate controls.

If within three months of the federal qualification deadline it appears to the Commissioner that a local government has not developed adequate controls, then the DEC is required to develop regulations for it.

If the local government fails to qualify under the flood insurance program, then the Commissioner is authorized to promulgate and administer the necessary flood hazard regulations. The DEC continues to administer these regulations until the local government adopts the regulations needed to meet federal requirements.

PENNSYLVANIA LAND-USE CONTROL LAWS

p. 104 blank

PENNSYLVANIA LAND-USE CONTROL LAWS[1]

1. Draining Marshland

date enacted: 1863; amended 1870, 1923, 1971; partially repealed in 1966

statute: 3 P.S. 721 to 725, 731 to 736

administered by: county court of quarter sessions

summary: Establishes a procedure whereby jointly owned wetlands may be drained for agricultural or other purposes. A majority of the wetlands owners must first submit a petition to the county court stating their reasons for the proposed drainage. The court then appoints three viewers or commissioners to prepare a report and make recommendations on the proposal. The expenses of the viewers are to be paid for by the petitioners. After reviewing the report and making sure that those adversely affected by such drainage have been compensated, the court may approve the proposal.

The drainage construction and subsequent maintenance is to be financed jointly by the landowners unless the wetland has been judged by the commissioners to be a public nuisance, in which case a portion of the expense will be borne by the township involved.

2. Timber Land Taxation

date enacted: 1905

statute: 72 P.S. 5581 to 5589

administered by: county commissioners, local assessor

summary: Recognizes the public benefits derived from the planting and cultivation of timber trees. Authorizes assessors to grant timber land owners a property tax rebate, providing they maintain certain levels of timber stocking or carry on certain tree planting operations. In order to receive these benefits, landowners must apply to the assessor on forms prescribed by the county commissioner.

The total number of acres eligible is limited to 50, and the rebate is limited to an amount not in excess of 45¢ per acre.

3. Obstruction of Waterways

date enacted: 1913; amended 1937

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[1] Source: Purdon's Pennsylvania Statutes Annotated (West Publishing Co., George T. Bisel Co., Soney & Sage Co.). Cumulative annual pocket parts include laws passed through May 10, 1974.

p. 106 blank

statute: 32 P.S. 681 to 691

administered by: Water and Power Resources Board (Department of Environmental Resources)

summary: Prohibits anyone from constructing a dam or other water obstruction or from altering any existing such structures without first applying for a permit from the Board. The Board may approve, deny or limit a permit. Applications must be accompanied by maps, plans and specifications of the proposed structures or alterations.

4. Conservation Districts

date enacted: 1945; amended 1963, 1967, 1972

statute: 3 P.S. 849 to 864

administered by: board of county commissioners, district board of directors, State Conservation Commission (Department of Environmental Resources)

summary: Declares it to be public policy to provide for the conservation of soil, water and related resources and to preserve natural resources. To carry out this policy, the board of county commissioners is authorized to form "conservation districts" and to appoint a district board of directors.

Among other powers and duties, the district board of directors is authorized to adopt, amend and repeal regulations relating to the conservation and preservation of soil, water and related resources. It may also require as a condition for certain benefits that land occupiers enter into agreements regarding the long-term use of their land. A State Conservation Commission is established to assist and advise district boards.

5. "Surface Mining Conservation and Reclamation Act"

date enacted: 1945; numerous amendments; revised and renamed in 1971

statute: 5 P.S. 1396.1 to 1396.20

administered by: Secretary of Environmental Resources (Department of Environmental Resources), mine conservation inspectors

summary: Authorizes the Commonwealth to exercise its police powers to conserve and improve areas of land affected during surface mining of bituminous and anthracite coal and other minerals.

Authorizes the Secretary to divide the Commonwealth into "mine land and water conservation districts," each with a mine conservation inspector. The inspector's duties include the enforcement of mining regulations within his district.

Anyone proposing to conduct a mining operation must first obtain an annual license from the Department. Before a licensed operator may begin surface mining he must post a performance bond and obtain a permit

from the Secretary. The permit application must be accompanied by a map showing the area to be mined and a detailed reclamation plan. The Secretary may order changes in the reclamation plan before issuing the permit.

Operators who fail to comply with any of the provisions of this act may be denied future licenses. Operators without a license may be required to forfeit all profits from the operation and to bear the costs of restoring the land.

6. "Delaware River Basin Compact" - Flood Plain Zoning

date enacted: 1961

statute: 32 P.S. 815.101

administered by: Delaware River Basin Commission (signatories: Pennsylvania, New Jersey, New York, Delaware and U.S.A.)

summary: Authorizes the Commission to study and determine the nature and extent of the flood plains of the Delaware River and its tributaries and, on the basis of such studies, to classify land and establish standards for flood plain use, pollution control and municipal, agricultural and industrial water supply development. Prior to the adoption of such regulations the Commission must hold public hearings.

7. "Project 70 Land Acquisition"

date enacted: 1964

statute: 72 P.S. 3946.1 to 3946.22

administered by: Governor, Auditor General, State Treasurer, and state as well as county and municipal agencies

summary: In an amendment to the Pennsylvania Constitution the voters authorized the Commonwealth to issue bonds to the amount of seventy million dollars in order to assist state agencies and local governments to purchase land for parks, reservoirs and other conservation, recreation and preservation purposes.

8. "Covenant Preserving Land Uses"

date enacted: 1966; amended 1967, 1972

statute: 16 P.S. 11941 to 11947

administered by: political subdivisions (counties enter into the covenants and supervise the program; counties and municipalities together determine whether the land qualifies), county or district planning commission.

summary: Authorizes counties to enter into covenants with landowners for the purpose of preserving farm land, forest land, water supply land and open space land, providing such land has been so designated on a

plan adopted by the county or district planning commission. Land in covenant is assessed at its restricted use value.

Covenants may extend for periods of five or ten years. On each annual anniversary the covenant is automatically renewed for the agreed 5- or 10-year period. Either party wishing to terminate the covenant must notify the other party of his intention at least thirty days prior to the annual anniversary. Once notice has been given, the covenant will end following the 5- or 10-year covenant period.

Any change from the designated use while the agreement is in effect constitutes a breach of covenant, and the landowner is subject to penalty taxes.

9. "The Land and Water Conservation and Reclamation Act"

date enacted: 1968; amended 1970, 1972

statute: 32 P.S. 5101 to 5121

administered by: Governor, Auditor General, State Treasurer, and state, county and municipal agencies

summary: In an amendment to the Pennsylvania Constitution the voters authorized the Commonwealth to issue bonds in the amount of five hundred million dollars for a "Land and Water Conservation and Reclamation Fund." The money is to be used by state, county and municipal agencies for the conservation and reclamation of land and water resources, including: the elimination of acid mine drainage, sewage and other pollution from streams; the restoration of abandoned strip-mined areas; and the acquisition of park and recreation lands.

10. "Susquehanna River Basin Compact" - Flood Plain Regulation

date enacted: 1968

statute: 32 P.S. 820.1

administered by: Susquehanna River Basin Commission (signatories: Pennsylvania, Maryland, New York and U.S.A.)

summary: Authorizes the Commission to "study and determine the nature and extent of the flood plains of the Susquehanna River and its tributaries" and, on the basis of such studies, to classify land and establish standards and regulations for flood plain use and water quality control. Before these controls may become effective, the Commission must hold public hearings and obtain consent of the signatories.

11. "Pennsylvania Municipalities Planning Code"

date enacted: 1968; amended 1972 (Supersedes previous municipal planning, zoning and subdivision enabling legislation and consolidates them into one comprehensive code. Zoning legislation was first enacted in Pennsylvania in 1923, subdivision legislation in 1947.)

statute: 53 P.S. 10101 to 11202

administered by: local governing body, planning commission, zoning hearing board

summary: The statute authorizes counties and municipalities to formulate and adopt comprehensive plans and official maps and to establish and enforce zoning, subdivision and planned residential development ordinances and regulations according to specific procedures.

The local governing body is to appoint a planning commission and a zoning hearing board to administer the provisions of this code. The counties are authorized to impose zoning and subdivision regulations on municipalities that fail to adopt such regulations of their own.

12. Acquisition and Preservation of Open Space

date enacted: 1968

statute: 32 P.S. 5001 to 5013

administered by: Department of Forest and Waters, Department of Agriculture, State Planning Board, county planning commission

summary: Broadens the existing methods by which the Commonwealth may preserve or acquire land for open space uses. Enables counties and the Departments of Forest and Waters and Agriculture to acquire interests in land for open space purposes, providing such land has been so designated on an accepted plan and following a public hearing.

In determining property assessment values, assessors are required to take into account any use restrictions which are imposed on private lands by easements or other devices.

13. "Pennsylvania Scenic Rivers Act"

date enacted: 1972

statute: 32 P.S. 821.1 to 821.8

administered by: Department of Environmental Resources

summary: Enables the Governor and General Assembly to protect certain rivers by declaring them "scenic rivers" to "assure the people of this generation and their descendants the opportunity to refresh their spirits with the aesthetic and recreational qualities of unspoiled streams." The Department of Environmental Resources may condemn land and acquire scenic easements to protect such a river's aesthetic qualities.

14. "Pennsylvania Farmland and Forest Land Assessment Act of 1974"

date enacted: 1974

statute: Act No. 319 of the Session Laws of Pennsylvania

administered by: county board of assessment, State Department of Agriculture

summary: Upon application by the landowner and approval by the county board of assessment, qualified farm, forest and open space land shall be assessed according to its present use value rather than at its market value. Applications are submitted on forms prescribed by the Department. In order to qualify, the land must be at least 10 contiguous acres and must conform to other use requirements as defined in the act. The assessor is directed to use state and national soil survey information and the U.S. Census of Agriculture categories of land use classes in determining the use value of the land.

If land approved under this act is subsequently converted to uses inconsistent with the present use classification, roll-back taxes become due. The taxes due are in an amount equal to the difference between the amount due according to the land's use value and the amount that would have been due according to its market value for the year of change plus the previous 6 years. If a portion of the land is sold or "split-off" for a nonconforming use, the entire parcel loses its tax status and roll-back taxes must be paid.

Enables landowners who entered into covenants or agreements under 16 P.S. 11941 et. seq. (no. 8 above) to renegotiate them so as to conform to the provisions of this act.

RHODE ISLAND LAND-USE CONTROL LAWS

RHODE ISLAND LAND-USE CONTROL LAWS[1]

1. Draining Wetlands

date enacted: 1874; amended 1905, 1909, 1923, 1938, 1956

statute: G.L.R.I. 46-20-1 to 46-20-5

administered by: town council

summary: Establishes a procedure for draining jointly owned wetlands when the owners cannot come to agreement. One or more owners of a wetland may petition the town council for the power to drain such an area. Following hearings and the submission of a report on the proposal by three appointed persons, the town council may approve or deny the request. The report must describe the mode of drainage and the apportionment of damages between the parties.

2. Tax Exemption for Land Planted to Forestry

date enacted: 1878; numerous amendments

statute: G.L.R.I. 44-3-8

administered by: local assessor

summary: Landowners planting certain species of trees (at least 500 per acre) for timber purposes on one or more acres of land worth not more than $25 per acre are eligible for a 15-year property tax exemption.

3. Dam and Reservoir Regulation

date enacted: 1882; numerous amendments

statute: G.L.R.I. 46-19-1 to 46-19-8

administered by: Director of the Department of Natural Resources

summary: Prohibits anyone from constructing or substantially altering a dam or reservoir until plans and specifications for the proposed work have been filed with and approved by the Director.

4. Zoning Enabling Legislation

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[1] Source: General Laws of Rhode Island, annotated (Bobbs-Merrill Co., Inc., Indianapolis, Ind.). Pocket supplements include laws passed through the June 1973 session.

p. 114 blank

date enacted: 1921; numerous amendments

statute: G.L.R.I. 45-24-1 to 45-24-21

administered by: municipal legislative officials, zoning board of review

summary: Authorizes municipal legislative officials to adopt, amend, and enforce a zoning ordinance for the purpose of promoting the health, safety, morals or general welfare of the community. To adopt an ordinance officials must follow certain detailed procedures. Once the ordinance has been adopted, the legislative officials are required to appoint a board of review to hear appeals and, in special cases, to grant variances to the ordinance.

5. Subdivision Regulation

date enacted: 1945; numerous amendments

statute: G.L.R.I. 45-23-1 to 45-23-23

administered by: plan commission, zoning board of appeals or platting board of review, municipal legislative officials

summary: Authorizes municipal legislative officials to grant planning commissions the power to adopt, amend and enforce a subdivision ordinance according to specific procedures. The zoning board of review or a separate platting board of review must be appointed by municipal legislative officials to handle grievances arising from subdivision regulations and, in special cases, to make exceptions to the regulations.

6. Conservation Commissions

date enacted: 1960; amended 1965

statute: G.L.R.I. 45-35-1 to 45-35-4

administered by: municipal legislative officials, conservation commission

summary: Authorizes municipal legislative officials to appoint a three- to seven-member conservation commission. The duties of the commission include: (1) preparing an index of all public or privately owned open space areas (including wetlands), (2) advising local officials regarding the conservation or development of such open areas, and (3) acquisition of fee simple and lesser interests in open space land, providing approval has been granted by local legislative officials.

7. "Green Acres Land Acquisition Act of 1964"

date enacted: 1964

statute: G.L.R.I. 32-4-1 to 32-4-15

administered by: Director of Administration (Department of

Administration), Governor, municipality

summary: Establishes the "Recreation and Conservation Land Acquisition and Development Fund of 1964" to assist the state and municipalities to acquire and develop land for conservation and recreation purposes.

The Director is authorized to acquire lands for the state with the approval of the Governor.

Municipalities must apply to the Director for such funds on forms prescribed by the Director. The application must include: (1) a description of the lands to be acquired, (2) the purposes to which the lands will be devoted and the need for such lands, (3) a comprehensive plan for their development, and (4) other information requested by the Director. The Director's decision to approve or deny the grant is guided by a set of criteria set forth in the act.

Municipalities cannot convert the use of land acquired under this act from either conservation or recreation uses without the Director's consent. The state cannot convert the use of land it has acquired without the consent of the Governor.

8. Coastal Wetlands Protection

date enacted: 1965

statute: G.L.R.I. 2-1-13 to 2-1-17

administered by: Director of the Department of Natural Resources

summary: Declares it public policy "to preserve the purity and integrity of the coastal wetlands" through the exercise of the police power of the state. A coastal wetland is any salt marsh, identified by certain specified indicator plants, bordering on the tidal waters and extending up to 50 yards inland.

Authorizes the Department to establish a program to protect the coastal wetlands. Following a public hearing and the notification of affected landowners, the Director may issue an order designating the coastal wetlands to be protected under the program. Restrictions which limit the use of land must be recorded in the appropriate local registry of deeds.

9. Conservation of Open Spaces

date enacted: 1965

statute: G.L.R.I. 45-36-1 to 45-36-2

administered by: municipal legislative officials, other local officials

summary: Authorizes municipalities, with the approval of legislative officials, to acquire interests in property or to enter into agreements or covenants with landowners to limit the future use of land to conservation or other open space purposes.

10. Protection of Salt Marshes

date enacted: 1965; amended 1967

statute: G.L.R.I. 11-46.1-1

administered by: Department of Natural Resources

summary: Prohibits anyone from dumping upon or excavating intertidal salt marshes without first obtaining a permit from the Department. Intertidal salt marshes are defined as coastal areas where certain specified plants are found growing. Violations result in a $500 fine; in addition, the person responsible may be required to return the salt marsh to its prior condition.

11. Current Use Taxation of Farm, Forest and Open Space Land

date enacted: 1968

statute: G.L.R.I. 44-27-1 to 44-27-6, 44-5-12, 44-5-39

administered by: local assessor, Chief of the Division of Forest Conservation (Department of Natural Resources)

summary: Declares it to be in the public interest to encourage the preservation of farm, forest and open space land.

Upon application by the landowner and approval by the assessor, qualified farm, forest and open space land is assessed for property tax purposes on the basis of its current use value rather than at its highest and best use value. The forest land classification must carry the approval of the Chief.

If land approved under this act is subsequently converted to uses other than farm, forest or open space, then additional taxes become due. The tax is in an amount equal to the difference between the tax due according to the market value assessment and the amount paid according to the use value for the year of change plus the two immediately preceding years.

12. Fresh Water Wetlands Protection

date enacted: 1971

statute: G.L.R.I. 2-1-18 to 2-1-24

administered by: Director of the Department of Natural Resources, municipal legislative officials

summary: Declares it to be public policy to preserve the purity and integrity of the swamps, marshes, and other fresh water wetlands through the exercise of the police power of the state. Fresh water wetlands include marshes, swamps, bogs, 50-year flood plains, etc., as defined in the act.

Prohibits anyone from filling, draining or otherwise altering the character of any fresh water wetland without first applying for and obtaining a permit from the Director. A permit may not be granted without approval from legislative officials.

Applications must be submitted on forms prescribed by the Director and accompanied by plans and drawings of the proposed project. The Director is required to give public notice of the proposal. If written objections are filed, a public hearing must be held. Once the above procedures have been followed, the Director is authorized to approve or deny the permit.

If a wetland is altered in violation of this act, the Director may order the responsible person to completely restore the area. If the person refuses, the Director is authorized to order restoration of the wetland by an agent of his choosing and at the owner's expense. Violations are subject to fines up to $1,000.

13. Coastal Resources Management

date enacted: 1971; amended 1973

statute: G.L.R.I. 46-23-1 to 46-23-16

administered by: Coastal Resources Management Council

summary: Declares it to be public policy "to preserve, protect, develop, and where possible restore the coastal resources of the state." Establishes a 17-member non-salaried Coastal Resources Management Council whose principal duties are planning for and managing the resources of the coastal region. The Council is also authorized to formulate policies and plans and to adopt regulations to implement its management programs.

Anyone proposing any development "within, above or beneath the tidal water below the mean high water mark" is required to demonstrate to the Council that his proposal will not (1) conflict with a management plan, (2) make any area unsuitable for uses to which it is allocated by such plan, or (3) significantly damage the environment. The council may approve, modify or reject the proposal.

In addition, the Council is authorized to regulate the development of certain major facilities or projects over land areas that might cause damage to the coastal environment - i.e., power generating plants, chemical or petroleum processing, minerals extraction, sewage treatment facilities, etc.

VERMONT LAND-USE CONTROL LAWS

p. 120 blank

VERMONT LAND-USE CONTROL LAWS[1]

1. Draining Low Lands

date enacted: 1868; numerous amendments

statute: V.S.A. 10:851 to 865

administered by: town selectmen

summary: When the public good requires the draining of low or swampy land for agricultural purposes and the owners cannot come to agreement, they may apply to the selectmen for an investigation. Upon receiving notification and after investigating the proposal, the selectmen may order the swamp to be drained at the expense of each of the landowners in proportion to the benefits each receives.

The selectmen may direct that drainage ditches be laid across the land of persons not directly benefiting from such drainage. The affected landowners may make an appeal to the selectmen for damages.

2. Dumping Restrictions

date enacted: 1937; amended 1947, 1961, 1965, 1967, 1969, 1971

statute: V.S.A. 24:2201

administered by: court system

summary: Prohibits landowners from placing rubbish or other junk within 300 feet of another's property. Includes other restrictions on the throwing or dumping of trash. The penalty for violation is a $500 fine. If the municipality fails to enforce this act, it must forfeit $100 to the state for each occurrence.

3. "Soil Conservation Act"

date enacted: 1939; numerous amendments

statute: V.S.A. 10:701 to 740

administered by: natural resources conservation district supervisors, State Natural Resources Conservation Council, district board of adjustment

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[1] Source: Vermont Statutes Annotated (Equity Publishing Co., Orford, N.H.). Pocket supplements include laws passed through April 4, 1974.

p. 122 blank

summary: Declares it to be public policy to provide for the conservation, development and use of the state's natural resources to protect and promote the health, safety, and general welfare of its people. Details procedures for organizing natural resources conservation districts. Establishes the Natural Resources Conservation Council to supervise the formation of such districts and, once formed, to advise the district supervisors.

Among other powers, district supervisors are authorized to adopt, amend and repeal regulations relating to the conservation of natural resources. They may also formulate and adopt land-use controls in the interest of conserving natural resources, providing the regulations are approved in a referendum by a majority of the landowners casting votes. Once the ordinance has been adopted, the rules apply to all landowners in the district.

Landowners may appeal for a variance from the ordinance to the supervisors or to a three-member board of adjustment.

4. Property Taxes - Fixed by Contract

date enacted: 1955; amended 1961, 1967, 1969, 1973

statute: V.S.A. 24:2741

administered by: municipal legislative officials

summary: Authorizes municipalities to enter into contracts with owners, lessees, bailees or operators of agricultural, industrial or commercial property for the purpose of fixing on such property: (1) its valuation on the grand list, (2) the rate of tax applicable, (3) the amount of annual tax or (4) the tax applicable as a percentage of the annual tax. Such contracts must be approved by a vote of two-thirds of the people present at a town meeting or by the legislative officials, providing they are so authorized by the people. Contracts shall be binding for a period of not more than ten years and may apply to existing or new agricultural, commercial or industrial property.

5. Alteration of Streams

date enacted: 1965; amended 1969

statute: V.S.A. 10:1021 to 1025

administered by: Water Resources Board (Department of Water Resources)

summary: Prohibits any person or municipality from altering the course, current or cross-section of streams without first applying for and obtaining a permit from the Board. Following an investigation of the proposed change, the Board may approve or deny the permit. Violations may result in fines up to $1,000, with each day being a separate offense.

6. "Vermont Municipal and Regional Planning and Development Act"

date enacted: 1967; amended 1969, 1971, 1973 (This act supersedes

previous planning and zoning statutes and integrates their elements into one code. Vermont first enacted zoning enabling legislation in 1931.)

statute: V.S.A. 24:4301 to 4493

administered by: municipal legislative officials, municipal planning commissions, regional planning commissions, administrative officer, board of adjustment

summary: Authorizes municipal legislative officials to appoint a three- to nine-member planning commission with duties which include: preparing development plans, formulating zoning and subdivision regulations and other by-laws, conducting public hearings, and advising legislative officials regarding the above.

Authorizes legislative officials of two or more contiguous municipalities to form a regional planning commission (with representatives from each) to prepare and adopt a regional plan, to promote coordination between communities, and to confer with and advise legislative officials.

A municipal development plan may be prepared by either the municipal or the regional planning commission and must be submitted to the legislature for approval. Any municipality which has adopted such a plan and has a planning commission may implement the plan by adopting a number of by-laws, including zoning regulations, subdivision regulations, an official map, and a capital budget and program. Another provision provides for a two-year, nonextendable interim zoning ordinance to protect the community during the period of formulating and enacting such ordinance(s).

The by-laws are prepared by the municipal planning commission and are submitted to the legislative officials for approval. Following a public hearing, the proposed by-law may be adopted if approved by two-thirds of the officials or, in rural towns (less than 2,500 population), if approved by two-thirds of the people voting (by ballot) in a town meeting.

Once by-laws have been adopted, no land development may be undertaken except in compliance with them. An administrative officer is appointed by the planning commission to administer the by-laws. In municipalities with adopted zoning by-laws, no one may commence with any land development within a zoned area until he has obtained a zoning permit from the administrative officer.

A three- to nine-member board of adjustment is appointed by legislative officials to hear grievances and, in special cases, to grant variances to the ordinance.

7. Protection of Land Under Public Lakes and Ponds

date enacted: 1967; amended 1969, 1971

statute: V.S.A. 29:401 to 410

administered by: Water Resources Board (Agency for the Development of Water Supplies)

summary: Prohibits anyone from filling, dredging or otherwise altering the land underlying waters of the state's lakes and ponds without first

applying for and receiving the approval of the Board. After reviewing the application and considering the public good, the Board may approve or deny the request.

Violators of this act may be subject to fines up to $1,000 for each offense.

8. Mobile Home Park Regulation

date enacted: 1969; amended 1971, 1973

statute: V.S.A. 10:6201 to 6240

administered by: Agency of Environmental Conservation

summary: Authorizes municipalities to acquire land in order to encourage the development of suitable mobile home parks.

Prohibits anyone from establishing or maintaining a mobile home park without first applying for and obtaining a permit from the Agency. After reviewing the application and giving due consideration to a number of factors affecting the natural environment and the safety and general welfare of the park residents, the Agency may issue, deny or limit a permit.

A set of basic regulations which apply to all mobile home parks are detailed in this act. The regulations include: (a) scenic views from the park shall be preserved; (b) two trees shall be planted per home site; (c) common open space shall be provided; (d) minimum spacing between homes shall be maintained; and (e) leases shall meet certain specifications to protect tenants.

9. Subdivision Regulation - Three to Nine Lots Only

date enacted: 1969; amended 1973

statute: V.S.A. 18:1218 to 1220

administered by: Director of the Division of Environmental Protection[2] (Agency of Environmental Conservation), Board of Health (Agency of Human Services)

summary: Prohibits anyone from subdividing land into more than two parcels of land of less than 10 acres each over any 10-year period (regardless of intended use) without first applying for and obtaining a permit from the Division of Environmental Protection. After reviewing the plans, the Division may issue or deny the permit or may impose conditions with the permit to insure compliance with health regulations.

Appeals regarding a decision of the Division may be made to the Board of Health. The Board is authorized to amend or repeal health regulations pertaining to the subdivision of land.

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[2] This statute ascribes the administration of this act to the Board of Health; however, a ruling ratified by the Vermont Legislature in 1970 transferred this authority to the Division of Environmental Protection (see Vermont Natural Resources Council, Vermont's Environmental Programs: A Guide, Montpelier, Vt., September 1972).

This act does not apply to municipalities which have adopted by-laws according to the "Vermont Municipal and Regional Planning and Development Act" (see no. 6 above), providing the regulations adopted have been certified by the Commissioner of Health as meeting minimum state health requirements (see V.S.A. 24:4493).

If the subdivision has ten or more lots of less than 10 acres each, a "250 permit" is required (see no. 11 below).

10. Open Space Acquisition

date enacted: 1969

statute: V.S.A. 10:6301 to 6308

administered by: municipal legislative officials, state agencies

summary: Authorizes municipalities and state agencies to acquire agricultural, forest and other open space interests in land in order to prevent the conversion of such land to commercial and residential uses. These interests may be obtained in fee simple and less than fee interests, including purchase and sell back, purchase and lease back and easements.

The owner of any remaining right or interest in the land shall be taxed only according to the market value of those rights or interests.

11. Land Use and Development - "Act 250"

date enacted: 1969; amended 1971, 1973

statute: V.S.A. 10:6001 to 6091

administered by: Environmental Board, district environmental commissions, Agency of Environmental Conservation

summary: Asserts state control over virtually all land development activities - commercial, industrial, residential and subdivision - of any significance.

Establishes a nine-member, autonomous, state-level Environmental Board (appointed by the Governor) and eight subordinate district environmental commissions to implement the provisions of this act. In addition to other functions, the Board is authorized to: (a) promulgate regulations; (b) administer the district commissions; (c) prepare an interim land-use capability plan (approved by the legislature and the governor in 1972), a state capability and development plan (approved by the Legislature and the Governor in April 1973), and a state land-use plan (rejected by the Legislature in 1974); and (d) issue "250 permits" for "development" and "subdivision" and hear appeals from persons regarding such permits. The principal function of the district environmental commission is to assist the Board by accepting applications for "250 permits" and by holding hearings.

The role of the Agency of Environmental Conservation regarding Act 250 is mainly advisory; however, it has regulatory authority over subdivisions having fewer than 10 lots which are less than 10 acres each (see no. 9 above).

Prohibits anyone from offering for sale any interests in any "subdivision" or from beginning construction on any "subdivision" or "development" without first obtaining a "250 permit" from the Board. For purposes of this act, a "subdivision" is land divided for resale purposes into 10 or more lots by a single owner within a 5-mile radius and within a period of 10 years. "Development" means: (a) residential construction by a single owner, involving 10 or more units within a 5-mile radius; (b) commercial or industrial construction involving more than 10 acres within a 5-mile radius or involving such construction on more than 1 acre within a municipality which has not adopted permanent zoning and subdivision by-laws; and (c) any construction above a 2,500 foot elevation.

Extensive criteria are detailed in the act to guide the Board in determining whether or not to issue a "250 permit." No application may be denied unless it is found that it will be detrimental to the public health or general welfare. The permit may impose constraints within the limits of the police power of the Board.

Anyone violating this act is subject to a daily fine of $500 or imprisonment for two years or both.

12. Capital Gains Tax on Sale of Land

date enacted: 1973

statute: V.S.A. 32:10001 to 10010

administered by: Commissioner of Taxes (Agency of Administration)

summary: Imposes a tax on the capital gains from the sale or exchange of all land according to the schedule shown below. The implied purpose of the act is to discourage land speculation. "Land" does not include buildings or other structures, or tracts of 5 acres or less to be used as the purchaser's principal residence.

The taxable gain from the sale or exchange is the amount realized (gross amount received) minus the "basis" (tax cost). The "basis" (tax cost) of land sold or exchanged is determined by provisions of the Federal Internal Revenue Code, as amended, pertaining to the sale or exchange of capital assets.

Years Land Held by Transferor	Gain as a Percentage of Basis (Tax Cost)		
	0-99%	100-199%	200% or More
Less than 1 year	30%	45.0%	60%
1 year, but less than 2	25%	37.5%	50%
2 years, but less than 3	20%	30.0%	40%
3 years, but less than 4	15%	22.5%	30%
4 years, but less than 5	10%	15.0%	20%
5 years, but less than 6	5%	7.5%	10%

The tax payment procedure involves the buyer, seller and Commissioner of Taxes. The buyer or transferee of any land held by the seller or transferor for less than six years shall, at the time the payment is made, withhold 10 percent of the total purchase price. This amount is remitted to the Commissioner. The seller must then file a return with the Commissioner setting forth the amount of tax due according to the above schedule. The seller then remits with the return the tax due or makes a claim for a refund.

13. Regulation of Flood Hazard Areas

date enacted: 1973

statute: V.S.A. 10:751 to 753, 24:4410b

administered by: municipal legislative officials, Secretary of the Agency of Environmental Conservation, municipal board of adjustment

summary: This act was adopted to carry out a comprehensive flood hazard area management program for the state in order to make the state and the units of local government eligible for federal flood insurance.

Each municipality is to be notified of the flood hazard areas within its boundaries and presented with a sample flood-plain hazard by-law by the Secretary. Within 180 days after receiving these, the legislative officials must adopt flood hazard by-laws according to the general procedures for adopting by-laws as established by the "Vermont Municipal and Regional Planning and Development Act" (see no. 6 above).

Variances to the adopted by-laws may not be granted by the board of adjustment until notice of the appeal has been filed with the Secretary and the regional planning agency, and until a public hearing has been held.

Permits may be granted by the board of adjustment for the repair, relocation, replacement or enlargement of any structure within a regulated flood hazard area, providing (1) such structure is required for continued feasible economic operation, (2) such structure will not threaten the property of others, (3) the permit states that such structure may not be eligible for any flood insurance, and (4) the permit is attached to the deed in the town clerk's office.

WEST VIRGINIA LAND-USE CONTROL LAWS

p. 130 blank

WEST VIRGINIA LAND-USE CONTROL LAWS[1]

1. Drainage Districts

date enacted: 1917; amended 1967

statute: W.V.C. 19-21-1 to 19-21-41

administered by: circuit court, board of supervisors

summary: Authorizes the circuit court to establish, organize and provide for the operation and maintenance of drainage districts for the purpose of straightening, widening, dredging or ditching wetlands and watercourses. To establish a drainage district, three or more persons owning land within the proposed district must submit a petition to the circuit court stating their reasons for the proposal and the benefits to be derived therefrom. The court may approve or deny formation of a district following a procedure involving engineering reports and public hearings.

If the district is approved, a board of supervisors is elected having authority to administer the construction, maintenance and financing of drainage-related projects within the district. Drainage districts are financed by a tax levied on landowners in the district according to benefits received.

The board of supervisors is granted the power of eminent domain.

2. Urban and Rural Planning and Zoning

date enacted: 1931; numerous amendments

statute: W.V.C. 8-24-1 to 8-24-71

administered by: planning commission (county or municipal), municipal legislative officials, county court, board of zoning appeals

summary: Authorizes the legislative body of municipalities and the county court to appoint a five- to fifteen-member planning commission. The commission is required to prepare a comprehensive plan, which must be in accordance with detailed surveys and studies of existing conditions and probable future changes. Once the plan has been approved by the legislative body or the county court, all future subdivisions must be approved by the planning commission.

Enables counties and municipalities to adopt a zoning ordinance, providing it is approved by a majority of the voters in a referendum. When

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[1] Source: West Virginia Code Annotated (The Michie Co., Charlottesville, Va.). Cumulative supplements include laws passed through the 1974 regular session.

p. 132 blank

the zoning ordinance has been approved, the legislative officials or county court must appoint a five-member board of zoning appeals to hear appeals and, in special cases, to grant variances to the ordinance.

3. Tax Limitation for Agricultural Land

date enacted: 1933; numerous amendments

statute: W.V.C. 11-8-1 to 11-8-33

administered by: county taxing unit

summary: Establishes a statewide system for taxing private property in which all property is grouped into the following four categories:

Class I - "All tangible property employed exclusively in agriculture, including horticulture and grazing."
Class II - "All property owned, used and occupied by the owner exclusively for residential purposes; all farms, including land used for horticulture and grazing."
Class III - "All real and personal property situated outside of municipalities, exclusive of Classes I and II."
Class IV - "All real and personal property situated inside of municipalities, exclusive of Classes I and II."

For each taxing unit, a maximum allowable levy is specified for each class of property. The maximum levy is greatest for Class IV and least for Class I property.

note: This is not a form of differential assessment of agricultural land like those adopted by many other states in the Northeast, since all the land is assessed at its market value. However, this system favors agricultural land by fixing the tax levy that may be applied to such land at a lower rate than that applied to adjacent more developed land.

4. "Soil Conservation Districts Law of West Virginia"

date enacted: 1939; amended 1947, 1957, 1963, 1967, 1973

statute: W.V.C. 19-21A-1 to 19-21A-14

administered by: soil conservation district supervisors, State Soil Conservation Committee, board of adjustment

summary: Declares it to be public policy to provide for the conservation of soil, water and related resources. Details procedures for organizing and administering soil conservation districts. A State Soil Conservation Committee is established to supervise and advise such districts.

To establish a soil conservation district, a petition signed by at least 25 persons must be filed with the Committee, stating the need for and the benefits to be derived from such district. Following public hearings and a referendum in which at least 60 percent of the landowners

approve the district, the Committee may authorize its formation. Supervisors are then selected (elected and appointed) to administer the functions of the district.

The supervisors have the power to adopt, amend and repeal regulations relating to the conservation of soil, water and related resources. They may also formulate and adopt land-use regulations in the interest of conserving soil and water resources, providing the regulations are approved in a referendum by at least 60 percent of the district's landowners. Once approved, the regulations apply to all landowners in the district.

Landowners may appeal regulations which impose "great practical difficulties or unnecessary hardships" to a board of adjustment.

5. Watershed Improvement Districts

date enacted: 1957

statute: W.V.C. 19-21B-1 to 19-21B-13

administered by: soil conservation district supervisors, watershed improvement district trustees

summary: Authorizes the establishment of watershed improvement districts within soil conservation districts for the purpose of constructing "improvements" to conserve, develop or dispose of water.

To establish such districts, 25 landowners or the municipality must file a petition with the soil conservation district supervisors stating the need for and benefits to be derived from such a district. If, following public hearings, the district supervisors approve this request, they may appoint three trustees to administer the functions of the district.

The soil conservation district supervisors retain their governing status as specified in the Soil Conservation District Law (see no. 4 above).

6. Surface Mining and Reclamation

date enacted: 1967; amended 1971, 1974; originally passed 1939

statute: W.V.C. 20-6-1 to 20-6-32

administered by: Director of the Department of Natural Resources (DNR), Chief of the Division of Reclamation (DNR), Reclamation Commission (DNR), reclamation board of review

summary: grants the DNR jurisdiction and control over land, water and soil aspects pertaining to surface mining. Establishes a Division of Reclamation and a Reclamation Commission and provides for the appointment of "surface-mining reclamation supervisors and inspectors" within the DNR to carry out the provisions of the act.

Prohibits anyone from surface mining without first applying for and obtaining a permit from the Director. The application must be accompanied by: (1) a description of the proposed operation, (2) maps and a detailed reclamation plan, (3) names of landowners to be affected, (4) a performance bond of from $600 to $1,000 for each acre of land to be stripped, and (5) other information and fees. The Director may issue the permit after giving

appropriate public notice. Permits must be renewed annually.

In addition to the other fees, $30 is charged for each acre stripped. The money goes into a fund and is to be used to reclaim land stripped prior to the passage of the reclamation provision.

The Director is required to prohibit all surface mining in areas determined to be "impossible to reclaim." He shall not approve any surface mine located within 100 feet of any public road, stream, lake or other public property or where the operation will adversely affect a state, national or interstate park.

Persons aggrieved by the decisions of DNR officials may appeal to a reclamation board of review (appointed by the Governor).

Noncompliance with the act is punishable by a fine of from $100 to $1,000 plus an amount sufficient to restore the area. In addition, the violator is liable for triple the damages incurred by the surrounding property owners.

7. "Natural Streams Preservation Act"

date enacted: 1969

statute: W.V.C. 20-5B-1 to 20-5B-17

administered by: Chief of the Division of Water Resources (Department of Natural Resources), Water Resources Board

summary: Declares it to be public policy to secure for "present and future generations the benefits of an enduring resource of free-flowing streams possessing outstanding scenic, recreational, . . . scientific or cultural values." Designates portions of three streams to be granted protected status. Future designation of "protected" streams may only be made through the legislative process.

Grants the Chief of the Division authority to promulgate rules and regulations to protect and preserve the natural condition of protected streams. Prohibits anyone from modifying such streams without first obtaining a permit from the Chief. Following public hearings, the Chief may issue or deny the permit, or he may issue the permit and attach limitations.

Anyone aggrieved by the Chief's decision may appeal to the Water Resources Board. The Board may affirm, modify or repeal the Chief's order.

8. Moratorium on Surface Mining Permits

date enacted: 1971 ; amended 1973

statute: W.V.C. 20-6A-1

administered by: Director of the Department of Natural Resources

summary: Prohibits the Director from issuing strip mining permits between March 13, 1973 and March 12, 1975 in counties where no such permits existed in 1970.

9. "Coal Refuse Disposal Control Act"

date enacted: 1972; amended 1974

statute: W.V.C. 20-6C-1 to 20-6C-8

administered by: Director of the Department of Natural Resources, Division of Reclamation (Department of Natural Resources)

summary: Authorizes the Director to identify on aerial photographs all coal refuse piles and associated water impoundments in the state and to eliminate associated hazards.

If the Director determines that a coal refuse disposal pile constitutes imminent danger to human health, he may, without the landowner's permission, enter onto the premises to eliminate the hazard. If the danger from such a pile is not considered imminent, the Director must order the operator to take remedial action.

Anyone aggrieved by the Director's actions may request a hearing.

A 1974 amendment directs the Department to promulgate a plan for the reclamation of the abandoned coal refuse piles located within the state and to establish priorities for reclamation action.

10. "Dam Control Act"

date enacted: 1973

statute: W.V.C. 20-5D-1 to 20-5D-10

administered by: Director of the Department of Natural Resources

summary: Prohibits anyone from constructing, enlarging, altering, repairing or removing any dam without first applying for and obtaining a permit from the Director.

Anyone who may be adversely affected by the proposed activity may request a public hearing. Following the public hearing (if one is held), the Director may grant, deny or limit the permit.

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Working Papers on Rural Community Services: National Workshop on Problems of Research on Delivery of Community Services in Rural Areas, December 13-16, 1971. Compiled by S. M. Leadley. (Published by the Northeast, the North Central, and the Western Regional Centers, the Southeast Regional Rural Development Research Center at Tuskegee Institute, and the Southern Association of Agricultural Experiment Station Directors)

Papers of the Workshop on Current Rural Development Regional Research in the Northeast, July 25-28, 1972

Publication

1. *Supplement to Task Force Report on Rural Development Research in the Northeast For the Next Five Years — A Framework.* August 1973.
2. *Community Resource Development: A Preliminary Bibliography of Extension-Related Material in the Northeast.* December 1973.
3. *An Inventory of Pilot Projects in Community and Rural Development: Cooperative Extension Programs in the Northeast* (forthcoming).
4. *Papers — Workshop on Evaluating State Title V Pilot Programs in the Northeast, October 29-31, 1974.* January 1975. One dollar per copy.
5. *The Proceedings of the Conference on Rural Land-Use Policy in the Northeast,* October 2-4, 1974. February 1975. Three dollars per copy.
6. *A Basic Introduction to Land Use Control Law and Doctrine.* By E. F. Roberts. March 1975. One dollar per copy.

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